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## New Approach to Divorce Laws

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IN 1944, a group of high-minded citizens organized the National Conference on Family Life, as an information-gathering and educating institution to fortify American family life. In May, 1947, the Conference conducted a well publicized meeting at the White House in which 125 organizations,<sup>1</sup> with a total membership of 40,000,000, participated.

Not the least important member of the Conference was the American Bar Association, which for the first time in its history spoke on the

divorce problem. ABA appointed Reginald Heber Smith, distinguished Boston attorney, and an editor of ABA's *Journal*, to prepare its statement on the legal problems involved in divorce. Mr. Smith's preliminary report was greatly strengthened by the supplemental critique of Judge Paul W. Alexander.<sup>2</sup> Mr. Smith outlined his proposals in the *Atlantic Monthly*, December, 1947, and he reports that he received an astounding number of comments and criticisms from all classes of people. In

<sup>1</sup> Seven were Catholic: National Catholic Conference on Family Life; National Catholic Conference on Industrial Problems; N.C.E.A.; N.C.W.C.; Family Life Bureau; National Conference of Catholic Charities; National Council of Catholic Nurses; N.C.C.W.

<sup>2</sup> Judge Alexander of the Domestic Relations and Juvenile Court of Toledo has been widely complimented for the efficiency and value of his modern "family court." Recent articles on his achievements have appeared in *Life* and *This Week*, national Sunday supplement. He is now head of ABA's Committee on Divorce Laws, replacing Mr. Smith, who has been named head of the Survey of the Legal Profession.

the 34-page report<sup>3</sup> submitted to the National Conference in May, 1947, Mr. Smith proposed that the whole philosophy of divorce laws and the entire procedure of divorce courts be fundamentally changed. "Our divorce laws," he said, "are thoroughly bad."

Such sentiments are most unusual in the legal profession. In the proliferating literature about the technically-legal questions of divorce, alimony and custody, little, if anything, is said about the ultimate causes of divorce. A few lawyers have suggested reconciliation of spouses, cooling-off periods, etc., but in general the legal profession, however shocked at the 700,000 divorces arranged through their offices in 1948, has done little to turn the tide. But the abuses have now reached an intolerable point, and ABA is determined to do its best to remedy the situation. This influential organization, (membership 42,000) will probably put their plan across, especially if President Truman acts on their suggestion to appoint a commission to study the divorce problem. The legal section of the National Conference on Family Life may well be shaping the new marriage laws of the nation!

First of all, ABA delimits its jurisdiction; it speaks of nothing but evils

that can be cured or ameliorated by law *as law*; matters which are economic or sociological are beyond its sphere. Again, ABA proposes neither more stringent divorce laws nor more relaxed ones. It takes the position that divorce in some forms is inevitable, but ABA "expects to stand shoulder-to-shoulder with the Church and all forces for good in fighting . . . a direct or insidious attempt to open the floodgates for more divorces."

#### A NEW PREMISE

What Mr. Smith's report suggests is a new premise for divorce law to replace the traditional assumption that divorce may be granted only to the innocent party against the guilty spouse. The new premise should be that the end of a divorce action is diagnosis and therapy designed to accomplish in each case what is best for the family and, consequently, best for society. Since at least 85 per cent of all divorce cases are wholly uncontested, the notion that divorce is an antagonistic proceeding demanding defenses and recriminations is totally unrealistic.

Although ABA's report probably exaggerates the importance of the "old" premise, yet such a premise has

<sup>3</sup> The final report of the Committee is available at a nominal cost from the Family Life Conference, 10 East 40th St., New York 16, N. Y. But there is no significant point in it which is not covered completely in Mr. Smith's report in the *Atlantic Monthly* article referred to above.

always existed in our divorce law. As the report puts it:

One main difficulty in our present divorce law derives from a false premise inherited from the ecclesiastical courts in whose jurisdiction the subject matter of divorce first reposed. It is the doctrine of guilt and punishment. A spouse is charged with violating his marriage contract. He is tried in a quasi-criminal proceeding, the issue being his guilt. Everyone is familiar with the way this medieval test actually serves to put a premium on vindictiveness, vilification, exaggeration, fabrication. The smoothest perjurer is soonest rewarded.

When, by this dubious means, the guilt of the defendant is established, he is punished in various ways in various jurisdictions, but mainly by being deprived of his married status. To consider this punishment is, of course, absurd, for almost always the "guilty" party is anxious, and often more anxious for his freedom than the "innocent" party (p. 7).

... yet Anglo-American law still assumes that divorce is a contest between two parties, one wanting the status changed because of the breach, the other opposing it. The forms and procedures that the law sets up, therefore, are intended for contentious litigation (p. 8).

### SOCIAL PROCEDURE

The modern proposed substitute for this, then, is a "socialized" court whose prototype would be the juvenile

court, the unique product of this century's judiciary. Here it is in the language of the Report:

We suggest handling our unhappy and delinquent spouses much as we handle our delinquent children. Often their behaviour is not unlike that of a delinquent child, and for much the same reasons. We would take them out of the quasi-criminal divorce court and deal with them and their problems in a socialized court. When a marriage gets sick there is a cause. This cause manifests itself in the behaviour or misbehaviour of one or both spouses. Instead of determining whether a spouse has misbehaved and then "punishing" him by rewarding the aggrieved spouse with a divorce decree, we would follow the general pattern of the juvenile court and endeavour to diagnose and treat, to discover the fundamental cause, then bring to bear all available resources to remove or rectify it (pp. 9-10).

This new court, really more an administrative tribunal, would use all the best available talent among psychiatrists, churchmen and teachers, to conciliate the spouses before they are allowed to file an action for divorce. This new "family court" demands that the framework of law, both substantive and procedural, in which the court operates be radically revised. Thus, defenses to a divorce action are abolished: the allegedly guilty party cannot charge the sup-

posedly innocent spouse with faults which, according to the present divorce procedure, prevent the suing spouse from obtaining the divorce sought. In this family court, the judge would have the benefit of the complete family record before him. This would be of great assistance since in as high as forty per cent of divorce cases, the parties have had previous contact with juvenile courts.

The committee is not unaware that a large staff of trained personnel will be required for each socialized court and that this will cost "many times what the old courts cost . . ." but if the "protection of family life is not worth a lot of money, we may as well all forget the whole business" (p. 22). One of the authors of the report has indicated unofficially that just as in the juvenile court members of one religious faith are assigned to a social worker of a corresponding religious faith, so also in the new domestic relations court an effort will be made to bring spouses with marital difficulties to a consultant of their own religious faith.

This whole plan of ABA is in many respects similar to the proposals submitted by England's Lord High Chancellor's Committee to the House of Lords in 1946.

New laws are needed for such a

reform, but ABA is firmly opposed to a Federal divorce law. For this, a constitutional amendment is necessary, and the difficulty of getting thirty-six States to ratify such an amendment would be almost insuperable. The only divorce law which Congress has written is that in force in the District of Columbia, and this omits habitual drunkenness and cruelty as grounds of divorce—omissions which would make the law unacceptable for many States.<sup>4</sup> ABA suggests that the various States standardize their divorce procedure. They propose more, however, than a uniform law among the States as is now had in the law of sales and negotiable instruments. ABA desires a complete change in the *approach* to divorce law. Their plan, therefore, goes far beyond that of the National Association of Women Lawyers, which for some time has been working for a uniform divorce law for the States.

Mr. Smith's report, moreover, advocates a greater strictness in the manner in which couples may apply for a license to marry—"the cure for marriage ills lies not in easy divorce but in hard marriage" (p. 25). There should be pre-marital education and a mandatory serological test. But this education, however helpful, the report admits, is not enough; "all the

<sup>4</sup> In 1923, Senator Capper of Kansas proposed a *Federal* divorce-law amendment but it met no success. Many nonlegal writers advance the idea, e.g., Clement S. Mihanovich in *America*, 74 (1946) 532-33, and Michael B. Majoli, S.J., in *SOCIAL ORDER*, 1 (1948) 353-57. Is such a proposal reconcilable with the principle of subsidiarity?



education in the books is useless unless the parties are inspired with a desire—a perennial urge—to make a go of it . . . home and Church rather than the State ought to do this job” (p. 26).

#### URGES FEDERAL COMMISSION

The Committee of ABA has recommended that President Truman appoint a ten-man commission similar to those on education, freedom of the press, civil liberties, etc., composed of eminent leaders from the fields of religion, law, sociology and education, to study the tragic problem of divorce and report their findings to the nation. In September, 1948, the House of Delegates of ABA, meeting in Seattle, unanimously adopted the report and conclusion of its special committee on divorce. The *ABA Journal* has given the committee excellent publicity and has solicited expert legal opinion as to the advisability of the committee's proposals.

It is then up to President Truman to make the next move. It seems likely that he will appoint the commission suggested. It was he who invited the National Conference on Family Life to meet in the White House, and it is expected that he will give further cooperation to the legal section of the Conference.

In order to criticize with some intelligence what the ABA is attempting to do, it is necessary to trace the history of divorce law and situate the

currently proposed reforms in the long historical chain, which has brought it about that the United States should lead the world, both absolutely and relatively, in the number of divorces given each year.

The natural law and Christianity are at the very heart of the early English civil law, but nowhere are they more perceptible than in the law of domestic relations. This part of the law springs directly from the canon law brought to England from the continent by the Church. The early English law is one of the few legal systems in recorded history which has forbidden, without qualification, an absolute divorce. Until very recently, the fundamental notions of the civil law of marriage have coincided in great part with the substance of canon law.

Up to 1850 in England, parties desiring a divorce were obliged to seek it by a special act of Parliament, and naturally such acts were sought for and given on very infrequent occasions. After 1850, the courts took jurisdiction, but English divorce laws have never been “liberal” and have been strictly construed and applied until the last decade or so.

In the United States, the original settlers allowed divorce a bit more freely than did the mother nation. Divorces were granted in each case, as in England, by a special act of the various State legislatures. This cumbersome method obtained until about

1840, at which time the various States decided to divert divorce requests to the judicial branch of government. The reasons for such a universal change are not entirely clear, but in general it was done to mitigate the increasing pressures on the legislatures which, in turn, were making it impossible to hear the complaint of every spouse seeking a divorce.

### COURTS TAKE JURISDICTION

When American courts assumed jurisdiction of divorce, there was no precedent or procedure for them to follow. In England, the ecclesiastical courts had had exclusive jurisdiction over actions for a separation *a mensa et thoro*; the civil courts could only annul marriages which had been void *ab initio*.<sup>5</sup> The American courts took over the procedure which the medieval Chancery courts had employed in litigating cases for separations. This procedure has never worked too well, simply because the basic premise is different, namely, in the American courts it is assumed that the bond of marriage is not indissoluble. The American civil action for divorce was directed to the equity side of the judicial branch of government, that is, the entirely separate court parallel to the law court which the Church, around

the year 1300, had invented to give, among other things, relief against the harshness of some of the laws devised by the powerful feudal barons.

But the courts of equity had by 1850 lost their original adaptability, and when the unprecedented flood of divorce cases started to come into American courts, the judges there felt obliged to apply rigidly the principles and procedure of the old equity courts—principles and procedure never formulated with this contingency in mind. The courts frequently only aggravated an already pitiable situation.

The American civil action for divorce developed into an action both for the breach of contract and for a personal wrong. It was quasi-criminal in nature, in that the plaintiff was obliged to prove that the defendant was guilty of conduct which justifies the innocent plaintiff rescinding the contract of marriage. The defendant could then charge that the plaintiff was also guilty of misconduct and thereby defeat the divorce. For example, if the wife sued for divorce (as more frequently happens) alleging adultery on the part of the husband, he could counter that she had been cruel to him and thus the court would be obliged to leave the two

<sup>5</sup> Thus the "anachronistic" New York courts where the only ground for an absolute divorce is adultery, but where the grounds for annulment have been increased over those at common law and have been given the broadest interpretation. If the presently-proposed legislation passes, New York State may be the first State to adopt the "family court," or at least something along this line.

wrongdoers where it had found them. The husband could likewise charge that the wife had forgiven him because she had cohabitated with him after his offense—this would also defeat the divorce.

The most important and significant part of the American civil action for divorce rests in the fact that the court is obliged to deny all relief if it is reasonably clear that the parties have conspired that the husband be apprehended in his adultery, or if the parties have agreed to invent an act of adultery and thereby perjure their way to a divorce. This would be the fault of "collusion," and no divorce based on such conduct may be granted.

#### DIVORCE BY MUTUAL CONSENT

Divorce by mutual consent is theoretically impossible according to our divorce laws. It is an open secret, however, that there exists a *de facto* institution of mutual-consent divorce. About ninety per cent of all divorce cases are uncontested, and while this is not an absolute sign of collusion, it is fairly good evidence. The courts have not been over-conscientious in searching out collusion as their rules require; they have succumbed to the sentimental idea that if two people want to be apart, there is no point in keeping them together. In other words, they have allowed a new

grounds for divorce to be quietly introduced—"or when the parties so desire." In this way the procedure of the old ecclesiastical courts, which the American law took more than a century ago, has been completely evaded.

The average divorce case today consists of a perfunctory performance of an empty procedure. There is the minimum of evidence on the part of the plaintiff; the judge asks if there has been a property and alimony settlement satisfactory to the parties. After receiving the usual affirmative reply, the judge grants the divorce much as he would allow two parties to rescind the ordinary commercial contract. And not too many lawyers or judges scruple over it. Followers of juridical positivism, they feel that the law should follow the changing *mores*. Carl Llewellyn, for example, one of the foremost authorities on jurisprudence in the country, argues<sup>6</sup> that the *de facto* institution of divorce by mutual consent should be made a *de jure* one, since it is the function of the law to adapt itself to the demands of each generation, and after all, "a pre-industrial form of wedlock" cannot be satisfactory now.

It should be noted that the medieval Chancery procedure adopted by the American domestic-relation courts a century ago was doomed to failure from the very beginning, because in modern times it was to be

<sup>6</sup> 33 *Columbia Law Journal*, February 1933.

underpinned by an entirely new premise. The ecclesiastical courts had allowed a separation *a mensa et thoro* in order to protect the family, not to liquidate it. A suffering wife was allowed a separation from an impossible husband because the family could only survive by this means.

But in the American courts the reason in fact, if not in law, why the complete divorce was granted was to preserve the happiness of the parties involved. The civil-contract theory of the nineteenth century became a part of our divorce law as it was written. The States realized that the marriage contract was a bit unique in that it created a "status" which should be the concern of the state, but the notion of the underlying *vinculum* is not very prominent in the civil marriage law of America. With postulates like these, it is not surprising that marriage as Americans conceived it was not handled too aptly by courts devised by medieval bishops!

The American Bar Association, therefore, suggests a completely new approach in their proposed "family court." One would be tempted to accept any new approach, since it is difficult to conceive of anything more impractical, inept and tragic than the present divorce mills currently grinding out decrees of divorce for every third marriage performed. The one virtue of the present system seems to

be that theoretically, *de jure*, it does not allow divorce by mutual consent. But the new plan proposed by ABA is designed to have this virtue, too. Both Mr. Smith and Judge Alexander have declared that they would abandon the whole plan immediately if they felt that it would lead to divorce by mutual consent.

### CATHOLIC ATTITUDE

There has been really no such thing as a "Catholic attitude" to the many proposals for reform of United States divorce laws. Whatever attitude has existed has been one largely of negative criticism; Catholic attorneys have not, as they might have done without compromising themselves, aided in the proposals for a reform of the *procedure* of a divorce trial.

In the various conferences and councils on family life which are becoming ever more prominent, the Catholic has the initial difficulty of resolving whether or not he can participate in an organization the basic postulates of which may be at variance with the Church and even with the natural law.

The Church was fortunate in having Walter George Smith, a Catholic attorney, influential in the National Congress on Uniform Divorce Laws held in Washington on February 19, 1906. He later incorporated a report on the Congress in his article on the civil law of divorce in the

*Catholic Encyclopedia*, V. 68.<sup>7</sup> It should be stressed, however, that ABA is not proposing a uniform law of divorce for the States but actually the abolition of all the grounds for divorce which constitute the basis of such laws! Hence, in considering ABA's proposals, the Congress on Uniform Divorce Laws has historical interest only.

The legal representative of NCWC, who was present at the discussions of the White House Family Conference, gave a qualified approval to the committee's report, in the sense that it is an attempt at a reform which at least promises something better. As is noted in the brochure<sup>8</sup> issued by the Family Conference after the proceedings, "the participating Catholic organizations point out . . . that any move toward the reform of our divorce legislation ought to start from the principle that the marriage bond is indissoluble and that it is the duty of the state to do everything possible to defend the bond and to preserve the stability of family life."

The Catholic attitude to the proposed reforms may be gathered from the words of Father Francis J. Connell:<sup>9</sup>

The Catholic legislator may not ap-

prove of any measure opposed to the natural law. . . Generally speaking the same principle would apply to any legislation to enable people to obtain a divorce and marry again: for such a separation of husband and wife is a transgression of the natural law. However, an exception might be made in laying down this rule. In the near future our legislators may be confronted with a proposal to establish a uniform code of divorce laws throughout the country. In the supposition that such a code would definitely diminish the number of divorces in our land, it would seem that a Catholic legislator might vote for it to be substituted for the present lax laws, on the principle that one may advocate the lesser of two moral evils when one of the two is sure to ensue.

It is difficult to see what good a Catholic attorney can do under the present setup. Aside from personal suggestions and counsel to his client in marital difficulties, the lawyer is usually helpless to check the desire and determination of the would-be-divorcee. In fact, the usual doctrine taught Catholic lawyers is "hands off" divorce cases except in extraordinary situations. A Catholic attorney may take a divorce case only "where either a public good or a *paramount* private advantage is at stake."<sup>10</sup>

It is conceivable, however, that under the proposed "family court"

<sup>7</sup> For the complete history of the unsuccessful Congress see J. P. Lichtenberger, *Divorce, A Social Interpretation*.

<sup>8</sup> This brochure gives ample coverage to the views expressed at the Conference by Catholic organizations on the position of woman, sex education, birth control and divorce. It is available from the Conference.

<sup>9</sup> *Morals in Politics and Professions*, p. 17.

<sup>10</sup> Bouscaren and Ellis, *Canon Law*, (1946), canon 1131, p. 567.

with pre-trial conferences, cooling-off periods, etc., the Catholic attorney could effect reconciliations in many cases, especially if cases in which one or both of the parties were Catholics were assigned to him. The court operated by Judge Alexander indicates that the new approach *does*

diminish the number of divorces since it has been found that conciliation of the spouses can be worked out in about twenty per cent of the cases. The ABA plan merits, then, a conditional approbation pending its more specific clarification and its actual mode of operation.



### ***Beyond the Machine, What?***

Regarding the whole field of contrivance, we may fairly claim that man as a tool-making animal is a success. From the Roman galley to the Queen Elizabeth, from the burning glass to the Palomar telescope, from the mill-wheel to the giant power-producing dam, everywhere are tangible examples not only of the scope and power of the tool-maker, but of the amazing speed of his progress. Our own self-criticism has induced a widespread intellectual defeatism. One of our most urgent tasks is to clarify the grounds of this self-criticism.

Why is it that the biological and technological progress of man seems to have landed us in a bloody cul-de-sac? Millions of human beings in America and Eurasia now have a more comfortable and abundant life (between wars) than their ancestors could have dreamed of; and this is directly due to our tool-making propensity. Critics may point out that it is no great advantage to go in a Buick instead of a buggy if you know you are going to hell. But that does not alter the fact that the Buick is an improvement on the buggy; it simply raises the question, who or what is at the wheel?—*William A. Orton in the FREEMAN, December 25, 1950.*

## One-Room World?

MARTIN M. McLAUGHLIN

*Reprinted from The GRAIL\**

**C**HICAGO needs about 100,000 new housing units. After a City Council battle lasting over half a year, it is getting an increase of about one hundred, to accommodate its predominantly war-born family growth. This watered-down "compromise" is the city's total public-housing program for the next few years—an inadequate supplement to a relatively small private-housing expansion which has been going on for the last three or four years.

This city is only one example—doubtless one of the worst. And public housing itself is only one aspect of the terribly urgent problem of a physical home for the family, which the American Hierarchy considered sufficiently important to mention three times in their statement of November 21, 1949, on "The Christian Family." It is a new problem in the sense that only during the last few years have private builders demonstrated their inability (or unwillingness) to supply enough and the right kind of housing for our people.

As a matter of record, except for the housing of some war-workers

during World War I, the Federal Government's concern for assistance to families in this field dates back only to the early New Deal period. The National Housing Act of 1934, which established the Federal Housing Administration to insure mortgages, was followed by the National Housing Act of 1937, which established the United States Housing Authority (now United States Public Housing Authority) to make long-term loans to State or local authorities for construction of low-rent housing. Public housing is still administered on this principle at a ratio of 80-20.

The Second World War brought a further concentration of people in urban and suburban areas before very much had been accomplished through these Federal agencies. Now, the post-war housing problem presents two aspects: replacement of substandard housing, and provision of additional new units.

Related to these pressing concerns is the matter of rent control, which began as a remedy for rent raises in defense-plant areas, but was extended in 1942 to all real property

\* St. Meinrad, Ind., December, 1950.

in the United States. With modifications, this feature has remained till the present time, although the current statute calls for its termination December 31, 1950, unless local option or the requirements of the new war effort rule otherwise. The Office of the Housing Expediter administers this law.

All this adds up to a rather substantial amount of government control and has prompted widespread criticism among landlords, home owners and real estate interests. Organized opposition to the operation of these regulations has prevented anything like an adequate remedy. Housing is still tight.

### A HUMAN PROBLEM

Explanations are perhaps helpful; but this is a human problem, better understood in the light of the persons most directly affected.

In this connection the experience of one young, middle-income couple may be of interest. It is by no means unusual.

They started off their married life a couple of years ago with a very small reserve—certainly not enough for a down payment on anything habitable; so they were in the rental market. They followed the usual procedure of letting everyone know about their need and then began to contact the real-estate men and answer the want ads—without effect. Accidentally, though, through a

friend, they heard of an apartment and wasted no time taking it—at a modest price (comparatively speaking) of \$57.50 per month. It turned out to be a very small, three-room basement in thoroughly disreputable condition; but it was a place to live—many times better than any number of so-called “flats” accommodating families with three or four children. With a certain amount of ingenuity they fixed it up rather attractively; but there was one insoluble problem—the periodic floods which poured over the floors whenever it rained. The bailing-out process came to be a wryly humorous routine; but the ensuing dampness made it imperative to find another place—particularly since the young wife was now pregnant.

After a brief and disillusioning sojourn in a “better” neighborhood, the couple began to answer want ads again, with a new urgency; and the unbelievable happened—someone answered the telephone at the number listed. They took the basement apartment advertised, which was much larger and not damp at all; it takes care of the three of them adequately, and there is even some expansion room.

Not everyone has been so lucky. One young university instructor, in the middle-income class, had to suspend his course preparations for three months, while he pounded the pavements in search of an apart-



ment; he found three rooms—now too small for his growing family.

A young \$250-per-month wage-earner, with a wife and baby, has found a two-room apartment, for which he pays \$85 monthly rent.

Another couple, despairing in the city, rented a flat in a suburb for \$65 per month; monthly transportation costs added fifty per cent to this figure.

A young taxi-driver had to house his expectant wife, their small son and himself in a one-room kitchenette for several months.

Each morning's paper carries some new account of miserable housing conditions. The Catholic labor newspaper **WORK** published in its June issue some excerpts from letters written to Chicago housing officials, the Mayor and the President. Here are some samples:

"We are desperate for a flat. The basement we are living in is not livable for human beings. The floors are so rotten in some places that if we step heavy our feet go right through the floors. We stuff the windows with rags and paper, but it's so damp our clothes are always wet. We lost our 9-year-old boy through tubercular meningitis, and I fear for my other four children. The Health Department says we should move, but where?"

And another:

"Please help me get a place to live. I have three children and expecting

another one. We live in one room just large enough for a double bed and a single one. My salary is \$40 a week and I pay \$11.50 a week rent for this one small room."

There is no point in multiplying examples. Conditions, for instance, are especially heart-rending for Chicago's fast growing colored population. The dingy kitchenette, generally "accommodating" from six to twelve persons, has, according to one reliable observer (Richard Wright), become the symbol of the social and economic depression of the Negro.

### PUBLIC HOUSING

People living under such circumstances are not even in a position to look for housing; they have no time. Public housing seems their only answer.

You are a fortunate house- or apartment-hunter if you have time to look. If you are now looking for some kind of place to live, perhaps the experiences of others may be of some help—at least toward feeling that you are not alone in your plight.

Tell everyone you know. If you know someone influential—like a landlord, or a janitor—you're lucky.

Answer the want ads. If you are lucky enough to actually contact the rental agent, you may discover a) that the rent is exorbitant, b) that you must pay an outrageous price for third-rate furniture, c) that you have to stand the cost of "redecora-

tion," d) that only adults (or even "working couples") need apply.

Put your own advertisement in the paper—and compete with dozens of other printed pleas offering money, new automobiles at list price, fur coats, and other luxuries in return for an apartment.

Perhaps you are thinking of buying a place. If you are a veteran (non-veterans have much more trouble), you have several choices. Within the city, however, it is almost impossible to find a new house; old houses carry a large down payment—sometimes as much as a third of the total cost—and although an FHA mortgage is generally obtainable, it is very difficult to get a GI loan on such a building. (New credit restrictions make the process even more difficult.) Cooperatives offer another possibility; generally they are four- or five-room apartments with (obviously) no expansion room in case your family grows. You are free, of course, to sell your equity, subject to the agreement of the other members; but the number of such equities advertised for sale every day may suggest caution.

In the suburbs you can buy a new house for a down payment of \$500 or less and monthly installments varying with the size of the down payment and the term of the mortgage. A four-room, somewhat expandable house will cost in the neighborhood of \$12,000; but you

should double that figure in estimating the total cost. (One should point out, however, that in the face of a depreciating currency, an investment in real property is a sound one.) The suburb, in addition, presents some special problems if you work in the city; transportation, to mention only one, is difficult, long and expensive.

In the course of the unending search for a place to live, you pick up a good deal of miscellaneous information about the rental business. The real estate agent tells you that the landlord must get \$40 per room per month to break even. The redecorated apartment building with the new elevator enables the owner to charge \$240 per month for a four-room furnished apartment. A brand-new building is under construction behind a sign advertising 2½-room unfurnished apartments at \$87.50 a month, four-room apartments for \$125 . . . And so forth.

### GOVERNMENT MUST ACT

The total situation which is a composite of these and many other examples and factors presents a real test. It is a test for the government under a constitution which gives it authority to provide for the general welfare. It is a test for a party which was elevated to power on a platform promising remedial action in this field. It is a test for the private interests—the Landlords' As-

sociations and Real Estate Boards—whose selfishness and devotion to horse-and-buggy economic ideas made this government action necessary, and whose obstructionism renders the government's program ineffective. It is a test for the faith of Catholics who profess a regard for the Divine institution of the family and yet contribute to the social conditions which threaten its very existence.

Encyclical after encyclical has emphasized the agonizing necessity of preserving the family as the fundamental social unit of a healthy society. Pronouncement after pronouncement has urged voluntary groups to promote social reforms, so that the state will not be forced by its conception of duty to intervene. Little progress has been made—particularly in the field of providing security for the family. The American bishops' statement of last year describes the social legislation of this country in the matter of housing as "slow, fumbling and inade-

quate." Our failure has made that legislation necessary. Our failure, several times compounded, has made it what the Hierarchy describes.

Much of our energy has been directed against the real and terrible evil of birth control. However doctrinally sound this approach may be, it is not convincing to argue that a young couple should bring children into a one-room world. It is not always selfishness or dislike of children that prompts the prevention of birth; very often it is a misguided love. It is hard to condemn a person you love to a childhood of dampness, poverty, squalor, filth and disease. Our concern for the family should extend beyond the promotion of births and Catholic schools. If society is suffering from a breakdown of the family—as we are repeatedly warned—then it seems that the physical surroundings might be a major contributing factor.

Perhaps we should seriously examine our consciences on this housing matter.



### ***Conditions for Prayer***

It takes courage to pray, because it takes courage for a man to take up his honest burden and help himself by his labors. It takes honesty to pray, the honesty that refuses to deny to God what is His due. There must be gratitude in prayer, a gratitude that delights in the magnificence of the power, the mercy, the goodness of the Infinite. And, of course, a proud man cannot pray without his whole fictional world tumbling about his ears by the admission that there is One above him.—*Walter Farrell, O.P., in THE SIGN, November, 1950.*

# A Reappraisal of the Doctrine of Free Speech

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**A**S THIS paper purports to deal with some of the difficulties which a consistent application of the traditional doctrine of free speech has caused to arise in modern society, a working definition of the subject of inquiry is a necessary first step.

Without attempting to establish a formula for all purposes, I shall use the term "freedom of speech" as denoting a principle which precludes any classification or judgment of public utterances on public matters aiming at selection of some of these utterances for favorable and others for unfavorable treatment by the authorities. Under freedom of speech, all ideas bearing on common affairs are considered to be equally entitled to expression, regardless of their content and intrinsic value. The principle calls for an official attitude of neutrality on the part of the authorities, denying them the right to establish and practice any public preference for one class of ideas over another. In this sense, freedom of speech may be called a non-preferential treatment of the contents of

public utterances by the community as a whole.

Thus defined, the doctrine of free speech would not seem incompatible with an occasional curtailment of utterances based on the fear that certain prevailing circumstances might lend a damaging effect to otherwise permissible ideas. The characteristic feature of the doctrine of free speech must be found, not in the complete absence of any restrictions at any time, but in the refusal to allow value distinctions between various types of ideas to have influence on the public treatment of utterances.

This principle of non-preference in matters of public expression is based on certain characteristic beliefs which it is useful to recall at this point. They may be conveniently classified under three headings: belief in the free quest for truth, belief in the free determination of the will of the people, and belief in the rational method of discussion as a "common good" of the social order.

Each of these values is conceived to be desirable from the

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point of view of individual interests as well as of the point of view of the common interest. Truth is approached in a continuous process of intellectual advance, progressing from one insight to another by way of criticism and correction. The stimulus for this movement is found in the critical faculties of each individual mind, so that a guarantee of free expression must be considered the best condition for a rapid and general advance to higher levels of rational insight.

#### CIRCULATION OF IDEAS

Similarly, the freely formed popular will is posited as that form of social organization which is of the highest value both to the individual interests of men and to the community as such. The people's will is held to be free when every individual member is assured of an active contributing function in it. The outvoted minority of today must be allowed a chance to win members of the majority to its views, and an unhindered circulation of ideas is the obvious means to secure that end.

Again, discussion as a method of social change and of settlement of conflicts is considered to be of equal value for each individual and for society. It is seen above all as the method of peace. Only rational clarification of the issues of conflict can pave the way for a true settlement, while irrational methods must lead

to violence. Freedom of expression is held to be the prerequisite of any rational discussion. When all parties involved in a dispute have an unhindered chance to express themselves and to air their grievances, error will be publicly revealed and solutions will suggest themselves. Moreover, freedom of speech is considered the best antidote to hatred, because the relief felt by the hater for having spoken his mind and the patience of the victim in being willing to listen eliminates hard feelings more effectively than all repression and restriction could.

If it is true that the doctrine of free speech is inspired by these axiomatic beliefs, we must allow it to stand and fall with the soundness of these assumptions. This paper is an attempt to criticize the traditional doctrine of freedom of expression at the point of its underlying assumptions. The attack is directed not against these assumptions in themselves but against the effect which the doctrine has on them when consistently applied. For the purposes of this paper, we shall therefore accept the basic beliefs while attempting to prove that the principle of free speech tends to discredit and invalidate every one of them in course of time. In other words, this doctrine deserves to be criticized because it is so ill conceived that it deprives itself of its own justification by destroying the value foundations on which it rests.

Like much of political liberalism, it turns out to be a self-defeating proposition.

## I

### TRUTH

Considering first the idea of truth, it is obvious that freedom of speech is meant to express the deepest possible respect for the pre-eminent value of truth. Freedom of speech constitutes a guarantee against any interference on the part of those in power with the ceaseless pursuit of truth, regardless of whether the motives for such interference may stem from selfish or from legitimate social interests. Thus even where the cause of truth might result in damage or injury to the functions of social power, the doctrine of free speech gives it precedence over the interests of sovereignty. Thus it is clear that the demand for free speech has sprung from profound reverence for the royal majesty of truth and a disposition to place it above all kinds of human self-love. But it seems that freedom of speech operates like some of the measuring devices of which physicists tell us, devices which when applied change the very reality which they are supposed to measure.

For the principle of free speech, although born of reverence for truth, proceeds to dethrone any truth already gained by guaranteeing that the further quest will not be affected

by respect for what insight has been won. It establishes the official assumption that all new ideas have an equal chance to be true, but it likewise establishes the assumption that all accepted ideas have an equal chance to be false. Truth once found is supposed to stand up under the impact of criticism and to prove itself in the crucible of discussion. While this assumption itself may be questioned on the ground that truth often is disagreeable and unpopular, it means in practice that accepted truth is not conceded any kind of official preference over new ideas. Although believed to be true, it is entered on equal terms with untried propositions in the general race of ideas. Thus an official stamp reading "Very likely untrue. Shake well before using and apply with extreme caution!" is placed on every kind of truth known to men.

This tends to destroy the very expectation on which the entire doctrine of free speech is based. That doctrine cannot have any meaning unless the exchange of ideas is believed to yield some result. Nevertheless, the official skepticism implied in the principle of free speech eliminates that goal, for when the result has been attained, the competition is encouraged to continue without pause. In this sense it can be said that realized truth is not treated as involving any obligation: it is not held to demand any deference, to impose any restraint on will

or thought. Victor today, it is once more contestant tomorrow; its reign, in the light of freedom of speech, is that of a fleeting moment and implies no commitment.

Now the dialectic movement of the mind from step to step and from lower to higher insight is certainly the only practical method of gaining knowledge which is known to man. But there is an important difference between a Socratic open mind and the non-preferential attitude implied in the doctrine of free speech. A gradual ascent on the dialectic ladder requires that insights once gained should be treated with the profound respect which is due to the hallowed ground of truth: they are the rungs on which we stand, be it for further advance or for the wide view they enable us to have. In a regime of free speech, nothing is considered worthy of such respect; every truth is treated as a potential untruth, and every untruth as a potential truth. Thus the very concept of truth recedes into a nebulous background: a goal never to be attained; while at the same time the quest for truth begins to assume a value of its own. In the place of deepening knowledge we find an ideal of constant change. To the extent to which the "pursuit of truth" is identified with discussion the latter takes the place of the pre-eminent value, thus usurping the quality of an end which ought to be attributed only to truth as such. It seems good

and desirable to keep talking, while the result of the talk becomes something of secondary importance, a by-product which is destined to be discarded as soon as it has been obtained. In this way, the quest for truth is turned into an exciting game rather than a serious and exacting endeavor, a game in which, like the Caucus Race in "Alice," all are winners and receive the prize of official recognition.

#### THE ULTIMATE GOOD

It is important to remember that what we expect to emerge from free public discussion is, above all, truth regarding standards of conduct, i.e., moral truth. Scientific knowledge is certainly an eminent value and as such has inspired the demand for free speech, but moral truth is what we have in mind when considering most of the problems of free speech. "Free trade in ideas," as Justice Holmes stated this belief in the *Abrams* case, is the best way to reach the "ultimate good." What follows if we treat all kinds of ideas concerning the ultimate good in the same way, granting to every one of them the same claim to the title of potential truth?

Firstly, such practice implies an admission that no moral truth is known to us as deserving preference or protection. At least this would be so if freedom of speech were rigorously applied without any restric-



tions. Since in reality the principle is not extended to utterances which constitute slander, libel, fraud or other attempts to do harm to some private individual, a distinction must be made between moral truth regarding inter-individual relations and moral truth regarding political affairs. It is only with respect to the latter that freedom of speech maintains an attitude of moral agnosticism. We have no doubt about moral obligations in private affairs, and we expect the authorities to defend recognized truth concerning such matters with all the means at their disposal. If, on the other hand, we demand a neutral attitude on the part of the authorities in all moral questions of political concern, we acknowledge thereby that the moral insights of our private relations have no bearing on these issues, and that standards of political morality are a matter of discussion rather than of careful cultivation.

Secondly, a non-preferential treatment of all ideas concerning the "ultimate good" means that disinterested ideas are not publicly conceded to deserve preference over self-interested ideas. We find therein an implied suggestion that moral truth might be expected to emerge from the clash of high-powered interests just as well as from the exchange of detached insights by scholars and saints. The protagonists of free speech seem to believe that only when all individuals have a chance to make

known their particular desires can an "ultimate good" emerge. The "ultimate good" thus begins to appear as a constantly changing and shifting resultant of interests, rather than as a product of common thought.

In a society in which truth is officially treated as but a passing rest in an endless movement of discussion, and goodness is considered a matter of popular agreement, a general indifference regarding absolutes begins to spread. Under the influence of relativism, ideas as such lose that intended relation to truth which originally caused them to be guaranteed the full measure of free expression. Where absolutes are no longer taken seriously, political ideas are sought not for the sake of knowledge, but for mere effectiveness. The more such relativization progresses, the more the guarantee of free speech serves to bring about something quite opposite from what was originally intended. In a general relativistic atmosphere, ideas become above all formidable weapons. There is an emotional vacuum in such a society, and ideas which are capable of filling it are apt to engender great political power. While in an age of rationalism liberty of speech served the individual as a defense against tyrannical monarchs and majorities, in an age of relativism it turns into aggressive power in the hands of demagogues and dictators. In such an environment, the rigorous adherence to



the free speech doctrine is tantamount to an official encouragement for tyrants, their success being made possible by words and ideas which have been conceived, not from a desire for truth, but from lust for power, and which are meant, not to dispel ignorance, but to exploit it.

No amount of free discussion can conduce to truth when such ideas dominate the market place. The masses from whose mental world the awareness of common standards of truth and goodness has receded are prone to accept not that which is true but that which is emotionally best fitted to their prevalent mood. Hitler's racial doctrine was thus received, in spite of many effective refutations by scholars and philosophers. In the absence of real respect for truth, not the best insight, but the most powerful weapon of propaganda prevailed. A regime of free speech in a period of relativism means that all those who are anxious to join in a general race for power by means of ideas find the whole arsenal of mental weapons officially reserved for any misuse they care to make of them.

## II

### POPULAR WILL

The second underlying belief of the doctrine of free speech is that in the supreme authority of a freely formed popular will. The notion of the "people's will," conceived as the

collective willing of all individual members of the community, implies respect for the opinion of each and seems to demand a guarantee for every member to express his ideas freely and thereby to make his contribution to the collective will. Unhindered circulation of ideas is thus considered a requisite for the conversion of minorities into majorities, and as the only conceivable remedy for errors and mistakes. In order to visualize how free speech is linked to the concept of the people's will, it will be well to recall the model of the assembly of free men in which every member was respectfully listened to and a consensus was reached after all possible points of view had been stated—a model which certainly has inspired the doctrine of freedom of speech.

It is here that we can find the hidden clues to the meaning of the concept of the "people" and to the effects which freedom of speech has on that notion. The democratic assembly implies a selective conception of membership. It consists of very definite classes of people. Not only is its membership restricted according to age (and sometimes to sex), but it also excludes the foreigner, the traitor and the rebel. It also implies a certain selectiveness regarding the contributions of members to the common will. The ideas which have a right to be heard in the assembly are characterized by a certain quality, the

quality of public faith which the individual members owe to each other. Against the background of a fundamental will to stay together and to keep faith with one another, differences of opinion are held to be valuable contributions to common wisdom. When differences develop to the point where they disrupt the bond of mutual loyalty, they constitute either treason or rebellion and involve forfeiture of the right to be heard peacefully.

#### MORAL QUALIFICATION

Thus the concept of "the people" seen in the light of the right of speech is a concept of exclusion and inclusion. It implies an element of moral obligation and moral qualification which is the basis for the authority attributed to it. Only within the limits of these qualifications do public utterances have a right to public hearing. Our thesis is that the doctrine of free speech tends to obliterate this criterion of moral qualification and thus to deprive the concept of "the people" of its distinctiveness and its authority. In doing so, it destroys the very foundation on which its claim to validity rests.

The problem with which we are dealing here is not that of defining treason and sedition—a very difficult question which does not come within the purview of this paper. At this point the question which concerns us is whether the doctrine of free speech

admits of any criterion by which utterances may be recognized as either belonging to the circle of mutual loyalty or denying the basic community. Such a criterion would not be invalidated by the circumstance that it might be very difficult to apply in practice. Even if its application were a matter of great delicacy and numerous doubts the very acknowledgment of a difference between qualified and non-qualified utterances would be of the utmost importance.

Actually, the doctrine of free speech knows of no such distinction. The guarantee of free expression means that any kind of idea, any public statement, any political intention is officially treated as if it were born of a spirit of public faith between the members of the community. A general presumption of loyalty is thereby established for any political will which cares to express itself. No kind of political idea is denied the potential quality of being "the people's will." Sedition and treason are confined to overt action. The notion that there are ideas which maintain and nourish the community and others which disrupt and dissolve it is explicitly rejected. No statement as such, whatever its content and implication may be, is held to indicate disloyalty or lack of public faith.

Under the influence of this all-inclusive sanction of every possible utterance, the concept of "the people" tends to lose its selective and exclu-

sive character. The element of qualification for the right of a public hearing gradually disappears, and "the people" is conceived more and more simply as a physical multitude of persons rather than as an entity held together by mutual obligation. Since there is no criterion of exclusion, there is none of inclusion either. Anything may claim to belong to the "will of the people," hence everybody may claim to be "of the people." If anything publicly said must be accorded full respect because it could conceivably develop into the communal will, the concept of the community loses any limitation and shape which it may have had. At the same time, it also loses the underlying justification of the authority of "the people," insofar as that authority is grounded in moral qualities. "The people" seen as a mere physical multitude, as but a statistical concept, can command respect for nothing but its physical power. It no longer obligates, it merely compels.

Under the influence of the non-selective doctrine of free speech, "the people" gradually loses the appearance of an ordered, structured entity and begins to figure in men's minds as something shapeless, formless, bottomless and entirely incomprehensible. Who or what are "the people"? What does it take to be one of them? The less clear our principles become by which such questions must be answered, the more speculative and

demagogical are the answers offered to the public in practical politics. Communists maintain that only they and their adherents constitute "the people," because they claim to stand for the alleged will of the masses. Fascists assert that their movement alone embodies the true character of "the people," because it breathes a spirit of national resistance and heroism. Both movements deny to all their opponents the capacity to be part of the "real people," excluding them thereby from participation in political life.

Such tendencies are living evidence of the uncertainties arising from the dissipation of genuine criteria of exclusion and inclusion regarding the community of "the people," the latter understood as the supreme authority of political will. If a church that had defined itself at first as the community of all who believe in certain religious truths, later discarded that criterion and in a spirit of broad-mindedness included in its membership all who had expressed an interest by sometimes attending services, and later still all who had discussed or just come to know its beliefs, the concept of the church would simply evaporate. Thus the concept of "the people" as the supreme political authority has tended to evaporate in our age, and the non-preferential doctrine of free speech has been one of the main contributing factors in this development. At the same time, this

evanescence of "the people" as a criterion of moral authority has also deprived the doctrine of free speech of its own justification. Like Midas, this doctrine seems to be unable to use whatever it touches.

### III REASON

"But," some will object, "this is a complete misunderstanding of the doctrine of free speech. Far from being neutral in respect to morality, it insists on the rational process as the only moral way of conducting social affairs. It is definitely committed to reason as the supreme 'common good' and promotes this highest social value by compelling everyone to listen to others, to answer argument by argument rather than by force. The reasoning process is the only practical alternative to violence in human relations. Men will not be prepared to reason unless they are taught that others may have arguments as good or better than their own. It is the official insistence on open-mindedness which gives rise to that attitude of practical reasonableness which is our only hope for peace. Hence readiness to allow any argument which people may want to advance is far from moral neutrality. On the contrary, it constitutes essentially a moral commitment."

<sup>1</sup> Quoted in Theodore Schroeder, *Free Speech for Radicals* (New York, 1916), p. 43 (italics mine).

In this or a similar way one would expect the proponents of free speech to formulate the idea of the "common good" on which the doctrine is based. Again, leaving aside any argument about the correctness of this assumption, one may ask what becomes of it when freedom of speech is applied to this concept.

The moral value which is here invoked is that of reasonableness. The principle of free speech, however, compels its adherents to refrain from any official preference of words which are uttered in a spirit of reasonableness over words which spring from a rejection of both reasonableness and reason. As a matter of fact, the rational motive is implicitly presupposed. In the words of Professor Cooper:

Indeed, no opinion or doctrine, of whatever nature it be or whatever be its tendency, ought to be suppressed. For it is either manifestly true or it is manifestly false, or its truth or falsehood is dubious. Its tendency is manifestly good, or it is manifestly bad, or it is dubious and concealed. There are no other assignable conditions, no other functions of the problem.

In the case of its being manifestly true and of good tendency *there can be no dispute. Nor in the case of its being manifestly otherwise*; for by the terms it can mislead nobody. If its truth or its tendency be dubious, it is clear that nothing can bring the good to light, or expose the evil, but full and free discussion. Until this takes place, a plausible

ible fallacy may do harm; but discussion is sure to elicit the truth and fix public opinion on a proper basis, and nothing else can do it.<sup>1</sup>

Both rationality and reasonableness are here taken for granted as the sole or dominant motives of public expression. These values are not seen as a "common good" which must be eagerly sought and carefully guarded, but as a natural disposition of man upon which one can count as on the rising of the sun. Free speech is considered as but the proper method to derive the maximum benefit from that trait of human nature.

#### WORDS AS TOOLS

Obviously there is a difference between discussion carried on with an open-minded attitude and a fight for power in which words are used merely as the main tools. Speech is not the chosen and reserved instrument of sweet reasonableness, nor force the only method of which the irrational will can avail itself. Words and force are both tools, and either tool can be used for varying ends. As the doctrine of free speech sanctions all public utterances regardless of their ends, it tends to blur this distinction. Under its influence, people no longer aim at rationality or reasonableness as the supreme "common good," but merely cling to the external forms of discussion as such. The doctrine of free speech may have been meant to insure rationality, but when actually

applied to political life it simply insists that everything in politics be done in the form of speech.

Thus it tends to convert the underlying notion of a moral good into a concept of method rather than spirit. Its protection is granted to the process of talking rather than to the attitude of reasonableness, thereby according to the means of discussion and persuasion the dignity of an ultimate end. In the words of Professor Sidney Hook: "The strategic freedoms are those of method; *they* must be maintained above all." When official policy thus emphasizes the interlocutory forms of politics, the people tend to believe that the externals of this process are a guarantee of an underlying moral will, and that abidance by these forms constitutes the supreme "common good." Observance of rules rather than cultivation of a certain spirit becomes the mark of obligation and the governing principle of social relations.

Once the idea of the "common good" has been formalized and emptied of its content, freedom of speech actually amounts to an official encouragement for every person or group that knows how to use the methods of democracy for the end of destroying its substance. The technique of talking, in and out of parliamentary bodies, is assured of official protection regardless of the underlying motives or intentions. Consequently, he who can master that tech-

nique can always count on a certain amount of support and approval, both by the authorities and the public. As the "common good" appears to be identical with procedural forms, any literal observance of the methods takes the place of moral legitimation. To the extent to which the methods are misused for ends which are in conflict with the ideal of rationality and reasonableness, this legitimation breaks down in practice. To the same degree the notion of the "common good" in itself becomes obscure, hazy, and more and more inapplicable to realities. A people which experiences this kind of progressive dissipation of the moral core of public life will one day become conscious of its lack of direction and will in mortal fright embrace any ideological substitute that happens to present itself in a plausible disguise.

#### IV

#### RESULTS

We arrive at the conclusion that the traditional doctrine of free speech, when consistently applied, has the tendency to destroy its own premises, such as the concept of truth, the notion of the authoritative "will of the people," and the ideal of rationality and reasonableness as the supreme "common good." While this erosion of the foundations may take place underneath the surface and not come to light until it has made considerable

progress, a number of practical consequences can be observed immediately. We shall touch here briefly on 1) the question of criminal subversiveness, 2) recognition of foreign governments, and 3) the problem of the defense of a free society against its ideological enemies. In every case, we shall endeavor to show how the principle of free speech prevents these questions from being answered satisfactorily.

#### SUBVERSION

1. There is general agreement that subversion is a crime. Criminal activities are not protected by the doctrine of free speech, as is evidenced by the fact that no utterance is allowed which is made with the intention of injuring the life, limb, or property of others. Such an utterance can be recognized as a direct attack on the person of a human being, classified as a clear evil, and thereby placed outside of the scope of freedom of speech. Now one can use this analogy and define subversion as an attack on the existence of the entire community. But what is injury to the "life, limb or property" of the community, if these terms can be applied figuratively? Can we recognize an intention to do harm to the people as a whole unless we have a clear notion of what it takes to keep the people in a state of healthy and vigorous being?

Under the influence of freedom of

speech, any awareness of such conditions of communal existence is gradually dissipated. When "the people" is conceived as a mere physical multitude, a statistical group with no shape, order, or meaning, it is difficult to see how it can be injured or attacked except from the outside. If it is not clear what harm subversion causes and what good it attacks, it is impossible to distinguish subversive from other political activities. Still, no society, not even the most relativistic one, can do without protection against subversion. A relativistic society finds itself thus caught in a dilemma, between the necessity of defending itself against its own internal enemies and the impossibility of finding a clear moral criterion of subversiveness. It escapes this dilemma by confining subversion to attempts to overthrow the government. The curious paradox results that a "free" society classifies injury to its government as a crime while looking with indifference on activities which undermine the spirit of community that is the only basis of freedom and mutual acceptance.

The arbitrary and tyrannical possibilities contained in this "solution" do not come to light in normal times in which freedom of speech offers a wide leeway to all kinds of political tendencies. But in times of danger, when the problem of subversiveness becomes pressing, the application of the government-protecting concept of

subversion leads to gross injustices. The government, in possession of this keen weapon, then feels justified in throwing up a protective wall not only around its own safety, but also around any chance policy on which it may have decided. Thus the shocking decisions of the repression years 1918-1921 may be said to result from a doctrine which is incapable of conceiving an injury to the community in any other way than as an attack on the government. When the notion of "the people" as a moral community disappears, "public order" remains the only point of reference for defining subversion, and governmental infallibility its ultimate ratio.

#### INTERNATIONAL RELATIONS

2. Similar consequences result from the traditional doctrine of free speech in the field of international relations. While it is the absence of a satisfactory concept of "the people" which spoils the definition of "subversion," the policy of recognition is handicapped when the notion of the "common good" turns hazy. In ordinary times, when the recognition of governments is not a vital matter in international relations, any *de facto* criterion will serve as a formula by which one can decide which government should be recognized and which should not. But in an age in which international wars are closely related to domestic tension and different types of government represent



strongly conflicting ideologies, recognition becomes more than a mere formality. It is then of vital importance to know which government should be supported by recognition and which weakened by a policy of non-recognition.

It appears, however, that nations which have been used to identify the value of the "common good" with the external methods of democracy have the greatest difficulties in distinguishing between good and bad governments. For instance, the only definition of dictatorship of which such a nation can conceive is in terms of violent methods as distinct from non-violent methods. If a dictator is shrewd enough to use parliamentary practices on his way to power and to maintain a parliamentary front when in power, he may live and die as a fascist ruler with the approval of the democratic governments. What he does to the community of the people over whom he rules, how he influences their daily lives, their trust in each other, their values, their inner balance—these are matters which do not enter into consideration.

Nations which are accustomed to slight such questions in their own domestic policies are not inclined to let them influence a policy of recognition of foreign regimes. The same agnosticism regarding the moral basis of communities induces many people in democratic countries not to distinguish between conflicting national

causes in terms of moral worth. The habit of shrugging one's shoulders about the ideal of the "common good" regarding one's own country results in a general skepticism concerning all national causes. One arrives at the conclusion that the others are probably fighting for objects which are just as good or as bad as those of one's own country, or even that no causes of moral concern are involved in war at all. People who fail to see a distinction between contending causes must ultimately come to feel that really nothing is at stake but survival.

### A FREE SOCIETY

3. The greatest difficulty produced by the traditional doctrine of free speech is that encountered by a "free" society which is compelled to define its attitude toward those who desire to end its freedom. Is it not the nature of liberty to provide a comfortable berth even for those who oppose the existing order of things, and would that principle not demand toleration for the very enemies of freedom? Could not the foes of a "free" society claim that they desire to destroy the existing order of freedom merely in the name of a higher freedom, and would not that claim have to be allowed, in view of our basic lack of certain knowledge of what freedom is? In other words, is a "free" society entitled to defend itself at all?



The problem is not identical with that of criminal subversiveness. Nor does it arise from the appearance, in our time, of totalitarian movements as such. Some totalitarian movements have been recognized as obvious enemies against which a "free" society has decided to defend itself and its institutions. But others are still in an ambiguous relation to "free" societies, a relation in which their character of either friend or foe is not clear. Fascism, once its characteristics were fully known, could be classified as an enemy because it lacked a clear and consistent political philosophy, perverted ideas for political effect, and substituted romantic slogans for rational objectiveness. These traits were so opposed to liberal principles that it was not difficult to perceive an irreconcilable hostility between the two. Fascism became, in liberal minds, identified with the violent methods of the concentration camps and storm troops. Those are just the kinds of methods against which a liberal society would feel justified in defending itself with all the means at its disposal.

But how about communism? This movement, unlike fascism, has sprung from a fully grown philosophy. True, it later developed its methods of violence, but it declared them justified by the repression which its ideas provoked. Communism claims to have a rational cause to which a liberal society must not deny a hearing. It

opposes the entire order of a "free" society, including the methods of free speech and democratic government, but it presents this opposition first in the form of a logical argument. Communists demand the right to destroy liberal society by means of the very liberties which that society grants them. Hence it is not fascism but communism which has significantly posed the relation between a "free" society and its enemies as an insoluble problem. To deny those enemies the use of liberty of expression is equivalent to making freedom of speech dependent on certain moral qualifications. Hence the need to take a stand on this question forces us to open once more the drawer in which we thought the metaphysics of politics had been put away forever.

The metaphysical issue cannot be evaded by a willingness to be inconsistent and to take action without regard to the subtleties of the doctrine of free speech. The question is not what one can or cannot prohibit, but how to defend a "free" society and to strengthen its powers of resistance. Any policy adopted by a "free" society which contradicts its own basic beliefs is likely to act as a boomerang. A downright prohibition of communist agitation would be opposed not only by the "progressive" part of the people but would also cause many other fair-minded persons to feel grave doubts about the

nature of such a "freedom." Legally and politically, a limitation of free speech in order to exclude the foes of freedom might be feasible, but it would tend to weaken rather than to strengthen the community, as it would create moral confusion and uneasiness within its own ranks and cause many people to detach themselves mentally and emotionally from their fellow citizens. The difficulty of a "free" society is not one of determining what it actually can or can not do against Communists, but how to make any kind of meaningful decision about what must be rejected and what can be tolerated by the community.

For a long time, the people of "free" societies have been accustomed to disregard the moral laws of community life, because the traditional doctrine of free speech with its official neutrality led them to believe that such criteria could not be known and need not be cultivated. If then we were now to impose strict limitations on the Communists, many among us would be led to the conclusion that "vested interests" and "imperialistic policies" rather than genuine moral distinctions had been the underlying motive. As long as that is the case, we cannot exclude the Communists from political life without doing ourselves harm. Even a superficial observation of the public temper must confirm this view, for the hysterical shouting by which some people cover

their own inner uncertainty weakens the social fiber no less than the gnawing doubts of the "progressives." Blindness to the basic values of community life cannot be cured by a sudden resolution to take some decisive action. There is no short-run solution of the problem raised by the presence of Communists in a society practicing freedom of speech. Such a society, when facing this enemy, seems to be caught in the dilemma of publicly disavowing its own fundamental principles or resigning itself to the idea that suicide is also a "legitimate" use of freedom.

## V

### THE ALTERNATIVE

What then is the alternative? If the traditional doctrine of free speech leads to such insoluble difficulties, must we resort to repression? Would anybody want to see the Goldman, Schenck and Abrams cases multiplied and elevated to the dignity of a publicly recognized principle? The answer must clearly be negative. Inquisitorial control of public expression cannot be the remedy for the failure of free speech. But is the reverse equally true? Must we argue that since repression is utterly unacceptable, freedom of speech, in spite of its shortcomings, is the only possible method? This is a popular but fallacious conclusion which is uncritical and superficial because it

simply turns from one position to the other without a close examination of why repression must be rejected.

If we may again refer to the notorious decisions of the first postwar period as our star exhibit of a repressive policy, we should ask ourselves what it is that causes us to consider them unsatisfactory. It cannot be the mere fact that public expression had been limited, because most of us accept some limits of speech as a matter of course, as a discipline of behavior practiced normally within the family, the club, the school, and the dictates of tact. Those postwar decisions were shocking not because public utterance was limited, but because this limitation was based on far-fetched, artificial and unconvincing criteria. We cannot accept an interference with the right of speech which is made without really good reasons. What were the reasons advanced by the courts in those cases?

All of them were in the nature of an argument from circumstances. Under certain circumstances, the intent of the indicted person is constructed; under certain circumstances, otherwise harmless utterances are assumed to be highly dangerous; under certain circumstances the community is held justified to do what it normally would reject. This might be an acceptable principle if the circumstances were clearly recognizable by everybody, so that an

adjustment could be made. But if we look again at the repressive decisions we find that the definition of the circumstances and their implication is in the discretion of the courts, so that sentences which are based so entirely on an appraisal of the situation often bear the marks of the judges' subjective fears. Even the "clear and present danger" test of Justice Holmes is nothing but a circumstantial criterion, allowing the court to judge an action on the basis of the court's own estimate of a situation. In all of these repression cases, it was not the content of the speeches which was held to reflect loyalty or disloyalty to the community. The intent of disloyalty was constructed from the effect which the speech was considered to have under the prevailing circumstances, measured in terms of alleged detriment to established government policies.

Since only the judge held the key to what could be considered detrimental to which aim of whose policy, nobody else could possibly be expected to know or recognize the limits between permissible and nonpermissible statements. The result was arbitrariness of judicial decisions, and the introduction of most inconsistent ideas into the doctrine of free speech.

In the light of those decisions based on an estimate of circumstances, the doctrine carried the implication that utterances of all kinds would be permissible in peace, while

in times of war nobody could in any way predict what would be tolerated and what condemned. Even the Declaration of Independence drew a sentence for sedition when published in the Philippines. It is this completely arbitrary latitude of repressive power in a crisis, compared with completely uncritical toleration in "normal" times, which revolts our conscience when we examine those infamous decisions. They remind us, for instance, of the man who might undertake to justify adultery by saying: "Normally I would not dream of doing such a thing, but with the nervous strain under which I have been laboring, and business going so bad, I felt that I had a right to sow some wild oats." It is the basic immorality of reasoning which makes us reject the repression cases.

If the arbitrary curtailment of public expression on the ground of pressing circumstances must be rejected as immoral, so must freedom of speech, on the same count. We have seen how awareness of the moral quality of political ideas is gradually undermined when society as a whole, through its official representatives, declares itself neutral in regard to political judgments. Such a *laissez-faire* principle in the field of political ideas implies that community is essentially not an entity of mutual loyalty, public faith and devotion to a "common good," but a vast and loose network of little significance as a whole.

Freedom of speech implies that the community as such really has no moral demands to make on its members beyond the requirement that nobody should interfere with his neighbor's desire to express his ideas. If anything may be thus advocated and everything must be tolerated, and if one opinion is potentially just as good as another, the test of ideas must be found in their historical success.

### RUINOUS CONFUSION

From this point of view, World History becomes the supreme tribunal. "Whatever is and can maintain itself must be right—whatever can conquer must be good—whatever finds acceptance must be true." Any successful government must be considered just, simply because it has found acceptance with its people. Thus justice is emptied of its meaning, truth identified with popularity, and goodness confused with preference. Such a "directionless freedom," to use Professor Heimann's words, can only result in a "ruinous confusion of opinion and values."

Could the doctrine of free speech be defended on the ground that a regime of official impartiality is the best contribution to the triumph of the good? It seems that such a defense could be valid only if one assumes either that the state has no positive function in the struggle between good and evil, or else that truth in these

matters is so uncertain that no government can do anything but repeat Pilate's query, "What is truth?", thereby washing its hands of the problem. On neither of these two grounds can the defense of free speech be successful. A defense on the first assumption would really question the entire institution of the state and would thereby also undermine the protective functions through which the state undertakes to guarantee free speech. Nor can a defense of freedom of speech be advanced on the second ground, for if we cannot know what truth is, there is no point in carrying on an endless discussion about it. Thus, left without defense, the traditional doctrine of freedom of speech stands indicted for destruction of the moral basis of society, a destruction not undertaken in the name of a higher morality, but in a spirit of neutrality, agnosticism and complacency.

Is a third way conceivable? If the indictment of freedom of speech stands, the only justifiable alterna-

tive is a limitation of public utterances by a general awareness of the obligation which community life entails and the public faith which it demands from us. There ought to be no public neutrality in questions concerning the moral basis of society, whether one approaches them from the point of view of moral obligation or from that of vital political interest. The members of a family are aware of certain boundaries of speech, without having to have these boundaries imposed on them by arbitrary dictate. Such awareness must be carefully nourished and cultivated by exhortation, rebuke and selection of things preferable over those that are non-preferable. In a society which has been accustomed to take the cohesion of community for granted, people must attune their minds to the moral needs of common life through a long process of practicing moral distinctions. They must be helped by a cautious official attitude of *parti pris* in matters concerning the moral requirements of community life.<sup>2</sup>

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<sup>2</sup> Some misunderstanding might arise at this point regarding the role of the government in the matter of public expression. This paper, it must be emphasized, does not address itself to the problem of what methods are best suited to achieve desirable ends with regard to public speech. It studies the question whether distinctions between right and wrong uses of speech in public life exist and whether they are relevant to the preservation of freedom in a political community. This problem must be clearly distinguished from another one, viz., the identification of the categories of right and wrong regarding divers situations, and a third one, viz., how to set up a procedure for making and applying such distinctions in practice. The need for an official attitude of *parti pris* has been mentioned here not as a device of procedure, but merely as a way of stressing the necessity of making significant distinctions between public utterances vis-a-vis the traditional doctrine of free speech. This doctrine denies that distinctions between public utterances are relevant to the health of the community and clothes its theory in the

Such an attitude should not attempt to shield the government and its policies from criticism, but rather promote the development of a broad and firm ground of common convictions, principles and standards which would serve as a generally understood criterion for drawing meaningful boundaries of public expression. When people enjoy a common awareness of what allows them to live together, and what demands common life makes not only on actions but on dispositions, no arbitrary expression of public speech will be held necessary or indeed possible.

#### A FIRM STAND

In the meantime, a firm official stand for what is known as right, true and good is required if an awareness of the moral nature of political community is to return. Moral judgments of political issues should not only not be avoided, but should be faced with resolution and made with clarity and determination. Above all we must once more become confident that such judgments are possible. In our private affairs, our actions are guided every day by judgments made in the light of moral standards. As there are sources of knowledge which en-

able us to make these daily decisions, we can securely count on bases for similar judgments in political matters, provided we begin to consider ourselves bound to make them.

But who is to decide on the standards which are to enjoy official favor? Whoever it may be, is he not always exposed to the danger of mixing his own interests with the standards of morality? Is not our limited knowledge, our egotism, our shortsightedness, our lack of understanding, a continuous handicap in the exercise of human power, and should we not therefore be hesitant in the extreme to take such far-reaching power into our hands?

Indeed we should. The inadequacies of the human race in the present stage of its development are too obvious not to command the utmost caution. Thus the entire question of what moral standards deserve public approval and official support can be approached only in a spirit of deep humility. But humility is something very different from neutrality. Neutrality springs from a profession of ignorance, humility from a confession of imperfection. Neutrality displays an attitude of indifference toward standards, humility implies

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demand that the authorities observe a strictly non-committal attitude. Rejection of the theory thus involves rejection of the official policy by means of which it presents itself. That is all that is implied in my insistence on an official attitude of *parti pris*, which does not prejudice any further investigations regarding the important problems of where leadership in the making of these distinctions should be located, and how agreement about them could be secured.

their definite acknowledgment. Humility is not possible without a sense of the objective reality of oughtness, an awareness of what is demanded of us, accentuated by the realization that we are falling short of the mark.

Hence humility, unlike neutrality, is compatible with clear decisions and judgments according to moral standards, although such decisions should

always be overshadowed by the knowledge of their provisional character. The spirit of humility inspires that courage in the midst of hesitation which enables us to go forward, at once boldly and with "fear and trembling," a spirit which Abraham Lincoln put into the words, "With firmness in the right,—as God gives us to see the right."



### *The Christian in the Atomic Age*

There is no need to repeat the fact that things have changed, or that today's world is full of uncertainties and may disintegrate before our eyes, or that there is likely to be plenty of perplexity and suffering. It is possible that today's young people will not have the prospect of planning for their future with the assurance that the future depends only on them. Young people know all this. The important thing is, what are they—what are all of us—going to think in the face of it?

In the face of an uncertain world, where a lot of the old stand-bys are gone, there is no need to be pessimistic. The real things are still there. They stand out even more plainly. God is still there, and His law and His promises. He still wants the same kind of character in us. He still offers the same salvation, still gives us the opportunity to serve Him. And more than this, perhaps. If, in the world we are entering, some of the important things are burned away, His will may become more important to us and His power more evident.—*Willis D. Nutting in TODAY, January, 1951.*



### *Discrimination*

"Christian charity is sufficient motive for making us in deed as well as in name a nation of people who play fair. But in this hectic age another point can be easily added. The Reds everywhere grind out reams of propaganda every time discrimination is practiced against all whose skins do not happen to be white. We know full well that they are not sincere in their protestation, but even so, anyone who plays into their hands by discriminatory action is an enemy of America and of all that is decent in life."—*CATHOLIC UNIVERSE BULLETIN, Sept. 8, 1950.*



# On Correcting Youth

DON BOSCO

*Reprinted from DON BOSCO\**

**I** HAVE often been asked and begged by my Salesians to set down various norms regarding the difficult matter of punishments.

In these times of ours you know that this is no easy problem in education, for in solving it even the slightest imprudence may be the cause of serious consequences. Very anxious, therefore, to comply with your request, I intend to give you some directions that will guide you. The education of the young, though indeed a delicate task, is a holy vocation and, if properly carried out, is of the greatest advantage to society. I am confident, therefore, that you will make every effort to put my recommendations into practice.

## PREVENTIVE SYSTEM

The system in use in our schools, as you know, is the "Preventive" System, which consists essentially in disposing the pupil to obey not from fear or compulsion, but from persuasion. In this system all force must be excluded, and in its place, charity must be the mainspring of action.

Human nature is prone to evil and at times must be dealt with severely. Yet charity should prompt all our actions, for indeed the inspiration of my whole life, of all my priestly efforts and ideals has been the love for poor abandoned youth. As you well know this is also the firing ideal of our Salesian Congregation. We are the friends of our boys; we take the place of their parents. You will obtain anything from them if they realize that you are seeking their own good. To gain their confidence, act towards them as a good father, who punishes and checks his children only from a sense of duty, when reason and justice manifestly require it.

## SOUND RULES

Punishment should be your last resort. In my long career as an educator, how often this has been brought home to me! No doubt it is ten times easier to lose our patience than to control it, to threaten a boy than to persuade him. No doubt, too, it is much more gratifying to our pride to punish those who resist us, than to bear them with firm kind-

\* 148 Main St., New Rochelle, N. Y., April, 1950.



ness. St. Paul often lamented how some converts to the faith too easily returned to their inveterate habits; yet he bore it all with a patience as zealous as it was admirable. This is the kind of patience we need in dealing with the young.

*We should, therefore, correct them with the patience of a father.* Never, as far as possible, correct in public, but in private, apart from others. Only in cases of preventing or remedying serious scandal would I permit public corrections or punishment.

If your first effort to correct the culprit has proved unsuccessful, find out if there is some other Superior who has gained the confidence of that lad. If so, let him try correcting him. In the meantime you should pray that some good may result from his attempt. When the people of Israel committed sin, Moses besought God not to wreak His vengeance on them. Like Moses, the educator should endeavor to moderate his own just indignation, for a sudden chastisement will rarely succeed where other means of correcting have not even been given a trial. Only moral strength can win the human heart which, St. Gregory tell us, is like an impregnable fortress, never to be conquered except by affection and kindness.

#### GENTLE AND PRUDENT

Be exacting when it is a matter of duty, firm in the pursuit of good, courageous in preventing evil, but always gentle and prudent. God will surely reward you if you are persevering in these virtues. He will make you the master of your pupils' hearts even when they are stubborn and rebellious. What I recommend is hard, I know, especially for young teachers, whose first inclination in obtaining discipline is to act on the spur of the moment and inflict punishments. But I assure you, real success can only be the result of patience. Impatience merely disgusts the pupils and spreads discontent among the best of them. Long experience has taught me that patience is the only remedy for even the worst cases of disobedience and irresponsiveness among boys. Sometimes, after making many patient efforts without obtaining success, I deemed it necessary to resort to severe measures. Yet these never achieved anything, and in the end, I always found they had met with failure. *Charity is the cure-all, though it may be slow in effecting its cure.*

# St. Thomas More

EDWARD A. HOGAN, JR.

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*An address delivered at the annual convention of the Newman Clubs of the Western States, Stockton, Calif., April 16, 1950.*

**F**OUR centuries ago on the chopping block of the Tower of London a lawyer lost his head. He was no ordinary lawyer. He was the finest lawyer England ever has known. Thomas More, Lord Chancellor of England, was confronted with a problem. The problem on its face seemed simple. His King wished approval of a marriage of doubtful validity. The opinion of the best lawyer in the realm could ease a troubled conscience. This lawyer had a reputation for independence as well as good judgment. The opinion of Thomas More would carry weight even against the opinion of the Pope of Rome.

Tacit approval of another's sin was a simple alternative to the death penalty. Others, including Bishops of the Church, already had taken the easy way out. More found a larger issue involved. If the King had been married according to the law of God, did man have the right to change that law? The answer could be yes, only if the law of God was not binding on man. A lawyer with the talent of More was unable to trifle with truth. More's death warrant followed.

The life of this man merited a better death. A student of extraordinary ability, he had the good fortune to be brought up under the tutelage of Cardinal Morton, Archbishop of Canterbury. Oxford University shed its light upon him. The practice of law brought him a great reputation. Service in Parliament matured him. The public became aware of his greatness while he served as under-sheriff of London. His King asked him to replace a Cardinal of the Church as his Chancellor. In this office he served with distinction.

Now it seems clear that More, lawyer though he was, did not care to assist his King in changing his Majesty's private matrimonial difficulties into a public scandal. The imminence of this scandal caused More's voluntary retirement from the Chancellorship. Effective escape from this world-changing catastrophe was not to be so simple.

The matrimonial difficulties of Henry VIII are known to all. A divorce being denied by the Pope, the authority of the Pope was in turn denied by the King. His Majesty's subjects were called upon to take the

Oath of Supremacy and Matrimony, or else be adjudged guilty of treason; to affirm that Anne was recognized as the real Queen because the King had the power to declare her such. This Thomas More could not do. To him there was here created an irreconcilable conflict between the law of God and the law of man. To him there was no choice. The law of God on this point was not decided ultimately by man but by the Papacy acting officially. Because conscience and not convenience was his guide and because God is greater than man, Thomas More preferred to lose his head in London rather than lose his soul in hell. A saint of the Church was born on that day.

### HENRY VIII AND STATISM

Often during the late war I wondered when the newspapers reported a rain of bombs on London if the ghost of Henry VIII was stalking his people. We were told that the forces of totalitarianism were destroying the followers of the democratic way. History shows us that Henry VIII led the revolt in favor of the supremacy of man-made law. The logical consequence of his assertion is the Statism of today.

From his time onward legal philosophers outside the Catholic Church have felt obliged to grant a divorce to Jurisprudence and Theology. Grotius tells us that that law is unjust which is contrary to the nature of

rational creatures. (*De jure belli ac pacis*, i, 1, 3, No. 1.) James I spoke of the Divine Right of Kings. Hobbes in his *Leviathan* (chap. 26) preaches the positivist view of the supremacy of the Commonwealth in dictating what is right and what is wrong according to man-made rules. Through Pufendorf, Austin, Hitler, Stalin and all the dictators this motion has flowered.

When philosophers insist that man alone is the sole judge of the rightness and wrongness of human law, what consequence flows more naturally than the justification of dictatorship? The doctrine which permits man to decide right and wrong is necessary, they tell us, to prove that man possesses free will. What stronger proof do we need of the existence of free will to choose and do evil than the wretched condition of the world today? If man does not have the power to make the laws and create the states that legitimize mass murder, how else do we explain this self-inflicted destruction of our species? The law of the jungle insists on greater order and greater self-preservation than do the present laws made by the free will of man.

Is it not time for us again to ask the question, what must man do in order to survive? The president of the largest university in the Western United States recently has said, the function of the State university of today is to find the means by which

the democratic way of life will be preserved because it will be through such democracy that civilization will endure. His suggestion is that the workers of the university engage in intensive research during the next five years in the fields of the social sciences to find out what it is that will make democracy function. Under the plan special consideration is to be given to the Founding Fathers of this country, who in their time fashioned our democratic system and made it work.

With an assurance of profound respect for the high office of the man who fosters such a plan, I beg to differ. The answer lies not in the social sciences but in a study of man himself. The starting point for such a study is not in sociology but in the individual, who with other individuals gives form to group life. Well-ordered group life is the consequence of well-ordered individual life. Social planning which flows from too great concentration on group activity will bring about only incidental improvement in individual life. Such treatment will decrease the importance of the individual, the founder and foundation of democracy.

I am sure that a special study of the attitudes of the Founding Fathers will increase the wisdom of the researchers. Their philosophy of law and government was stated very simply.

In the Declaration of Independence

they said: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness—that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

In the words of the late Thomas Woodlock, these phrases constitute a series of literally tremendous affirmations, the full import of which should be carefully noted.

#### OUT OF STEP

In the first place, they affirm God as the Creator of man. Your atheist or your agnostic is at once out of step with the Founding Fathers.

In the second place, they affirm the consequent sacredness and equality of human personality. Your evolutionist and your behaviorist is at once out of step with the Founding Fathers.

In the third place, they affirm liberty as the inherent right of personality. Your mechanists and your pragmatists are at once out of step with the Founding Fathers.

In the fourth place, they affirm the primary purpose of government to be protection of personal rights. Your positivists and your sociological jurists are at once out of step with the Founding Fathers.

Since none of the popular philoso-

phies of the present day coincide with those of the Founding Fathers, might it not be a good idea to examine the philosophy that was popular in their time and which seemed to permit democracy to work?

Perhaps we shall find that the public school is not equipped for such a study. Not many of us pretend to understand the public school system of today. But there is one part of it we do know about. Religion is not to be taught. The United States Supreme Court has so ruled. Presumably it is to be taught elsewhere. In our present civilization this is not done except by a small minority.

Since our Founding Fathers practiced religion, how may we explain their personal and political beliefs without recourse to religion? The product of our public school system of today finds that he cannot explain democracy because he does not know about religion. His mind, trained to be scientific, cannot grasp the notion of democracy because he does not recognize its visible or invisible properties nor the reason why it takes its form. To the public school political scientists democracy is as great a problem as cancer is to medicine or perpetual motion to the physicist. Unless religion is given a place in the research which the State university is supposed to undertake, I wonder if five years will suffice for the study.

If religion may be used and, thank

God, we are free to do so outside of the public school, the acts of the Founding Fathers seem capable of explanation. Even without religion much of their thinking can be found in the presently neglected writings of Aristotle perfected by the medieval scholastics.

This philosophy uses man as the starting point of its demonstration. Of all the objects of worldly creation man alone is free. This does not mean that he is not bound by the simple physical laws which operate on all creatures. The freedom is that of the will, the characteristic by which man is differentiated from all other creatures.

Man stands in the middle of the Universe. He looks up and sees God. He looks down and sees the brute. Doing what no other mundane creature can do, he thinks and reflects on his position.

#### MATTER AND SPIRIT

He observes that, in common with the brute, he grows, nourishes and thrives physically. In common with the brute, and as distinguished from the plants and the flowers, he has the power of moving around by his own motion, of hearing and seeing, and the use of all the faculties that we call the senses. To understand his other powers he must look up to God, for as distinguished from all other visible creatures man can think and man can will.

The individual who makes this discovery finds himself the center of a Universe. This world of ours is made up of matter and of spirit. Only in man do they unite, and thus he is a little cosmos in himself. Through that spirit which he possesses he is a personality and is possessed of eternal destiny, his unique claim to fame.

With a felicity of expression seldom achieved, one of our writers accurately describes the personality of a human being in a letter which he directs to a newly born infant: "Now that you are, you will ever be."

Because he is destined for eternity, man has a dignity and a worth unmatched in this world. The government, which the positivists tell us has the authority to rule man, exists only so as to decay. Even the most perfect government cannot live beyond the span of the life of the world. The Universe, from its highest mountain to its smallest brook, the animal kingdom, from the dinosaur to the lion, and governments whether tyrannical, oligarchical, or democratic will never know eternity. Man alone of all worldly creation is to live forever.

Man's dignity comes from his fitness for eternity. No power may with propriety transcend this dignity. The state and government exist to help man to achieve the fulness of this dignity. The idea has been put this way for illustration: Each person in a free country is to be counted as one, an all-important one. In a dic-

tator state he is a nonentity, like a zero in a number, whose function only is to give significance to the integer at the left—the dictator. The more zeros, the more important is the one. Take the zeros by themselves and their importance will never increase or be decreased. According to the Founding Fathers, each person in this country is to be counted as one, with the right to stand next to every other one as an equal.

The Founding Fathers recognize that one as a contingent being with a relationship of dependence toward God. They recognize, too, that man is a social being with a relationship of equality to his fellow men. The preservation of that equality requires that no man can rule another except with rightful authority. The intellect of man tells him of the reasonableness of cooperation to preserve that equality and his will leads him to do that which will preserve equality—namely, to found good government. This is the source of our rightful authority.

### THE COMMON GOOD

Thus civil society is formed. The purpose of this society is the common good, to supply the needs of man in the temporal order, by securing social peace and temporal prosperity not only in material goods but also in intellectual, artistic and moral perfection.

In the Declaration of Independence

the Founding Fathers said: "We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights . . . that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

By way of enumeration they said: ". . . that among these unalienable rights are life, liberty and the pursuit of happiness. . . ." It must be clear that they meant to convey the idea that man-made laws which would contravene these natural or unalienable rights would have no binding effect. So our test of good law is that which contributes to the welfare of the individual according to his natural rights—that which does not is bad. Our test is the one which uses human personality as its measure.

A proper emphasis on the preservation of the rights of the individual should make it more or less simple for the sociologist to discover the means by which our Founding Fathers intended that democracy should exist and be made workable.

Endless experiment in the so-called redistribution of wealth, the socialization of industry, the standardization of education have helped little in making democracy effective. Recognition of the fact that man is a proprietary being with a stewardship toward inferior beings, which his nature requires that he discharge with

fairness and honesty, will make our social problems seem less difficult. Social legislation which goes contrary to the natural rights of man will tear down the democracy of our Founding Fathers. The Founding Fathers recognized what too many philosophers and educators do not recognize today—the fundamental nature of man. Not only did they believe, but they wrote it so all may know that man is:

A contingent being with a relationship of dependence on God.

A social being with a relationship of equality to his fellow men.

A proprietary being with a relationship of stewardship toward inferior beings.

Any law which violates the natural rights of man is not in accord with God's law—it is man-made law which will destroy man.

The strength of individual men many times has exceeded their wisdom. This strength imposed upon a government has made serfs and slaves of many from time immemorial. If we travel back through the ages with the historians, we see the Medes, the Persians, the Greeks, the Romans, the Huns, the Spanish, the English, the French destroying their own civilization. Some place in the world today the same forces of destruction are at work.

Yet a few great thinkers have offered guidance to preserve man against himself. Aristotle, Thomas



Aquinas, St. Thomas More, Bellarmine, and our Founding Fathers have tried. Perhaps it is not too late for the world to learn.

As Catholics living in the midst of upheaval the lawyer saint, Thomas More, should be an inspiration to us. At the time of his canonization Gilbert Chesterton told us that in one hundred years' time More will be even more important than he was at

the time of his death. This will be true, if More's death comes to be regarded as the type of struggle between the law of the State and a higher law; for upon that difference—whether or not we place Divine Law in the last resort above the law of the State—depends the whole future of the world. Hitler proved that, as Russia's Joe Stalin is proving it now.



### ***Unity Amid Racial Distinctions***

It must always be remembered that racial distinctions are, from the Catholic point of view, only in the less essential part of men. The "living soul" that God breathed into Adam is similarly breathed into each individual by Him, and it is that which makes him to be a human person. Human persons who, in addition to this, have the bond of grace in the Mystical Body of Christ have a greater unity, however far apart they may be in their physiological composition, than even blood relations who have it not.—*Finbar Synnott, O.P., in BLACKFRIARS, December, 1950.*



### ***The Uncomfortable Convert***

Converts who have found the Church feel too often like lost souls in it. Many of them come from Protestant parishes that were smaller and had time to be friendlier. They miss the handshakes, the warm greetings, the sense of "belonging." To a newcomer nothing is colder or lonelier than a jam-packed Sunday Mass where there's not a familiar face, and where everyone dashes madly away from you afterwards. Helping to bring converts in is a definite part of the apostolic work of a parish. Dropping them with a "you're on your own now, brother" once they're in is hardly the way the early Christians did it. Individual parishioners should go out of their way to be friendly to converts. Parish societies should definitely seek them out, invite them to special "welcome-get-to-know-us" meetings, have members call for and escort them to such meetings, and introduce them all around.—*Roma Rudd Turkel in INFORMATION, January, 1951.*

# Challenge to the Catholic Business Man

VERY REV. LAURENCE J. MCGINLEY, S.J.

*President of Fordham University*

*Address to the Fordham University School of Business, New York City,  
December 9, 1950.*

**I**N THESE times there is a challenge to all of us in a statement attributed to Pius XII: "Let us thank God He makes us live among the present problems. It is no longer permitted to anyone to be mediocre." That statement is as true for a miner in the pits as for a bishop in the sanctuary. It is as valid for the anonymous stock clerk in Macy's Department store as for the most headlined senator on Capitol Hill. I think it is especially appropriate to the Catholic business man.

Today the free world looks to America to feed its desperately hungry peoples, to rehabilitate its broken machines, to supply "know-how," matériel and arms to preserve its freedom. Looking toward America for this assistance, the eyes of the free world focus on the leaders of American business. In the past these men organized miracles of production. They are expected to organize new miracles of production in the future. To them, and to you, who are training yourselves to be leaders of American business, it is not permitted to be mediocre.

If you are to surpass mediocrity, if you are to live up to the expectations of a tortured world, you will need two precious and essential endowments: skills and vision. You will need skills in accounting, statistics, market analysis. And you will need a realistic vision rooted in deep faith in God, Who sets the total purpose of peoples, machines, "know-how," matériel and arms. In forwarding reconstruction of the social order, the Church has constantly been faced with this problem: there are too many people who have the skills of management but not the vision; too many people who have the social ideal but not the skills. You must aspire to both.

To surpass mediocrity in your role as Christian business leaders, you must first of all be intelligent and well prepared *business men*. Management is not just a more serious way of exchanging marbles or of bartering butter for wheat. It is a complex set of skills for developing team work, streamlining distribution, providing employment and producing incomes for all participants and prod-

ucts for all buyers. Management is a profession "servicing" owner, worker, consumer. Like many other specialized functions, it has grown far beyond the understanding of the average citizen. Ordinary people simply do not know how a business should be organized so that it may realize both legitimate profits and essential social ideals. They leave this task, therefore, to professional business men, just as they leave care of their health to the medical profession, protection of their civil rights to the legal profession and a large part of their mind's education to other professional groups with other special skills.

It is true that marvelous things have been wrought by ordinary people in many little ways. Perhaps the little ways will ultimately save us. But it is also true that in the vast problems of modern technology the Church itself is dependent upon the professional business man, upon the managers. As the managers of the future you must in the discharge of your professional responsibility work out practical arrangements in modern business which will express and realize the Christian social ideal. This is a professional task and that is why I say you must first of all be intelligent, well-equipped business men.

But you are also to be *Catholic* business men. This is where the vision comes in. Unlike so many

others, you will not acquire the skills and then proceed to fashion a vision with them alone. This would truly be an earthbound, material vision—just like the skills themselves. You already have a vision, beyond the skills, capable of inspiring you beyond mediocrity.

To be a Catholic business man means so much more than just being a business man who is a Catholic. There may not be a Catholic system of cost accounting or a Christian system of retailing, but there is a genuinely Christlike way of being a business man. For you, setting a price or negotiating a wage is much more than applied economics. It is applied morality, as well. The first is relatively easy. The second is admittedly difficult. In their successful combination is your challenge to be more than mediocre. Skills and a vision! This is your goal as Catholic business leaders: to master the science of management and then employ it in the fulfillment of the social ideal of your Catholic faith.

#### CONVICTION OF GOD'S PURPOSE

I would like to comment on three of the basic convictions of that faith. The first is the conviction of God's purpose: that all the resources of the earth exist ultimately for all the peoples of the earth; that God wishes these resources—the fertile fields and willing water falls, precious ores and mysterious energies stored away by

nature—to serve all his children for His glory as their Creator and their full personal development as His creatures.

Here surely, in making these resources useful and available to all peoples, is a challenge to the productive and distributive genius which marks management that is skilled and genuinely alert. In facing this challenge, management—the executive, the owner, the supervisor, the “coordinator”—must see beyond private advantage alone, beyond good quarterly reports, comfortable reserves, and inventories geared to the latest directive from Washington. Here is where management becomes truly a profession and not a mediocre role for mediocre men. It can become so only if it is inspired by the first element in your faith as Catholic business men—a conviction about the real purpose of the riches of the earth.

#### THE CONVICTION OF RESPONSIBILITY TOWARD EMPLOYEES

A second challenge confronts the Catholic business man, based on the conviction of his responsibility for the welfare of his employees. Where industry has long been established and a vast number of men have access to the goods of the earth only through employment on the property and under the direction of others, the Christian social ideal is most concerned about the worker, be he jani-

tor or be he vice president in charge of sales, but especially if he be janitor.

Bringing the resources of the earth within each man's reach takes on a new phrasing and meaning here. How to organize a business enterprise so that the family living wage can always be paid; how to organize so that the employee can develop his own human dignity and contribute his special genius to our business life through his labor organizations: these challenges are a vital part of the Christian social program. Employee rights present great problems to business men, but in recent years splendid progress has been made toward solving them. What business men have done so often under compulsion in the past they must now continue to do freely, spurred on by this second conviction of responsibility for employee welfare rooted in the vision of Christian faith.

A final challenge confronts the Catholic business man in his conviction that business competition must be free but ordered—and ordered from within. It is a task of the manager, as we have seen, to place the resources of the world at men's disposal through employment of workers on the one hand and through sale of products on the other. Surely it cannot be that this serious task is to be fulfilled in a blood-stained arena wherein men are utterly free to thrust and parry for profits alone,

umpired only by that invisible policeman called "self-interest."

No, all social life—its economic phase particularly—must be regulated by an order from within as well as by legal sanctions from without. The satisfaction of human needs is not something which can be bandied about by inflationary price changes, business recessions and other economic "trends" for which no one seems to take responsibility. Free competition must be ordered competition. How can it be better ordered than under the leadership of management itself, by that genius for organization which has accomplished so many productive marvels before? How order it better than by recognizing the responsibilities of group to group, by more profoundly realizing the natural unity which already exists between employer, worker and consumer? The intimate nature of an organization which will channel competition along the lines of the total common good has been discussed by scholars in all lands. Its achievement in practice will be brought about by business men with a Christian vision, men who are capable in the skills of management and faithful to the convictions of their vision. Here, surely, is a goal surpassing mediocrity.

These three important convictions

of your Catholic faith—God's purpose, responsibility to employes, and ordered competition—are sometimes referred to as unreal. To practise them would not pay, it is objected, and the risk would be prohibitive.

To this we must reply again: "This is not the hour for mediocrity." The Christian social ideal admittedly cannot be realized by following certain old-line doctrines still masquerading as "sound economics." It cannot be realized by those who clamor for protection under the aegis of free enterprise, but who understand by that the petty concept of private gain to be reached at all costs, free from any of those risks that the true enterpriser assumes for the sake of his fellowmen. The Christian social ideal will be realized only by those who are driven by a sense of serious and sacred stewardship to bring to the service of all men the rich resources which modern management and technology make at least physically possible. It will be realized by men possessed of vision as well as skills, men who will hold the challenge and all its risks well worthwhile when accepted in a spirit of faith in the purposes and providence of God. May this sense of stewardship be intimately yours in the days when you are the Business Alumni of Fordham.

# Catholic Action Means You

WILLIAM FERREE, S. M.

*Reprinted from The MARIANIST\**

A CERTAIN old Irish pastor, asked to take part in a parish discussion concerning the role of the layman in Catholic Action, became restless and just a bit irritated at the turn the discussion had taken. Finally, someone ventured to ask his opinion. He arose, cleared his throat impressively, and said: "The role of the laity is to contribute to the support of their pastors and—to keep quiet." That broke up the meeting.

Unfortunately, that attitude has been characteristic of too many Catholics, both lay and clerical. Too often Catholic Action for the layman has been looked on as attendance at parish altar societies and Holy Name Communions. This in spite of the fact that all modern Popes since Leo XIII have insisted that the layman must play an *integral* part in Catholic Action.

No matter how much we forget, or how clear a theory we have to the contrary, the necessity of the lay apostolate remains. Today the question is not one of mere fittingness or advantage; or of some counsel of perfection that a man might legiti-

mately take or leave alone, as with a vocation to the religious life. Rather it is a question of absolute necessity. Without the participation of the laity an integral Christian apostolate is impossible.

Numerous historical causes have contributed to bring about a general lack of understanding of the necessity of the lay apostolate. Chief among these is the reaction to the Protestant Revolution.

The Protestant movement was essentially a lay and laicizing one, even when renegade members of the clergy headed it. This explains the sustained attack on the Christian Sacramental system; for only by destroying that system could the reformers abolish the need for the clergy. Naturally, in reacting to such a movement, the Church had to "de-emphasize," at least for a time, the role of the laity.

Another cause of the de-emphasis of the layman's role is the tremendous foreign missionary effort of the Church from the seventeenth century on. This has been almost entirely an ecclesiastical undertaking, which the laity could support only

\* 108 Franklin St., Dayton 2, Ohio, January, 1961.

indirectly, at second hand, by their contributions.

But today, the emphasis is again on lay participation in the Christian apostolate. This emphasis reached its climax in Pope Pius XI's promotion of Catholic Action; and it is interesting to note that when historical justification was sought for such emphasis, the Pope preferred to appeal to the very first ages of the Church's existence, when St. Paul ended his Epistles with salutations to his "co-workers in the Gospel," and when the conquest of a pagan and often persecuting world obviously could not have been carried out without intense lay activity.

#### STATEMENT BY PIUS XI

It is about this aspect of the problem—the necessity of the lay apostolate in a secularist world—that Pope Pius XI was thinking when he made certain statements that have almost scandalized the theologians; as when he said that the apostolate of the laity in Catholic Action "differed but little" from that of the ecclesiastical hierarchy itself!

If one misunderstands and tries to apply such a statement to the *sacramental* character of the Christian Priesthood, it sounds like an invitation to another Protestant Revolution; but applied as it was to the *necessity* of both apostolates, it is obviously true.

From the beginning, Our Lord

Himself remarked that the harvest indeed was great, but the laborers few; and there has never been a time when it has not been so. From this alone it must be obvious that the official "laborers," the clergy, must at all times be assisted by lay apostles. This need can become particularly acute, as in modern times, when a spectacular growth of populations and a crisis of vocations have conspired to make the numbers of the clergy altogether insufficient for the great task of "preaching to every creature."

More than that, there have always been groups of men who for one reason or another are openly hostile to the clergy, and hence are beyond the reach of their influence. But they also are called to the Christian life, and since the clergy cannot reach them, the task falls of sheer necessity on the laity.

This problem has become particularly acute in modern times, when whole sections of populations, notably the laboring classes and the "intelligentsia," have been captured by anti-Christian forces; and when entire nations are being wrenched by violence from allegiance to God.

Another reason pointed out by Pope Pius XI for the necessity of the lay apostolate is the great complexity of modern life and the almost incredible acceleration of the rate of social change. Profound changes of social living occur now



in decades which in past ages could not have been accomplished in centuries. Moral and religious guidance in such circumstances becomes almost impossible without close contact with the changing institutions of life, and such close contact can be had only through the close collaboration of the laity.

Certainly these considerations demonstrate beyond a doubt that the apostolate of the laity is a necessary thing: but in a certain sense, they are beside the point. They depend in one way or another on historical circumstances, and these circumstances could conceivably be different, so that the conclusions drawn from them would be different also.

### "TEACH YE ALL NATIONS"

There is a deeper and more cogent reason for the lay apostolate which is independent of all considerations of time or place or other circumstances. It is contained in the very words of the mission which Christ gave to His Apostles: "Go, teach ye all *nations*, baptizing them."

The Apostles were to form not only Christian *individuals*, by baptism; but also Christian *institutions* or *communities* of men: Christian families, Christian neighborhoods, Christian professions, Christian states and nations, a Christian world.

Once it is granted that Christianity is not only an individual reception of Divine Grace but also a social

force, it immediately becomes clear that a lay apostolate is necessary to it, with a necessity that can never be ignored without disaster.

The simple fact of the matter is that the institutions or groupings of men which make up human society can never be transformed or controlled except from within.

Let us take marriage and the family as an example. Certainly Christianity, which knows important things when it sees them, aims to make Christian *families*, as well as individual Christians in families. It knows very well that if the families themselves are not Christian, then full Christian perfection is not even accessible to the individual members within them. It also knows what a Christian family is.

But here is the important point: no matter how much its official representatives set forth the requirements of a Christian family, no matter how much they instruct and exhort and encourage, *nothing* will really be accomplished until the laity who live in the families accept their instruction and reduce it to practice.

Thus the final stage of the apostolate in the social order, the actual work of Christianizing the institutions of human life, is exclusively and inalienably the sacred work of the laity.

By their very separation from the institutions of secular life to become

ministers of the Sacraments and preachers of the Truth, the clergy have lost direct control of secular life. That control must then be supplied by the collaboration of the laity, or it will not exist.

"The laity must carry the mind of Christ to their associates, Catholic and non-Catholic," said Archbishop Robert E. Lucey of San Antonio recently. This has been the continual

thought of all modern Bishops and Popes.

It was this vision of the absolute necessity of lay collaboration in the social apostolate which prompted Pius XI, the "Pope of Catholic Action," to say: "Catholic Action we deem to be as indispensable at the present time as the priestly ministry itself; and in it all must cooperate."

And that word "all" includes you.



### ***Can This Be True?***

The young Catholic fellow who begins to think seriously about social problems—and Socialist propaganda at his work and in his trade union not only compels him to think, but supplies him with a deceptively plausible answer—I make bold to say that in seventy-five per cent of our parishes such a young fellow will find no one who is prepared to supply the antidote to the poison; who will be able to steady him, to tell him what to read or where he can find an instructor. And the result? In too many cases another lapsed Catholic.—*C. Logan McDermott in the CHRISTIAN DEMOCRAT, November, 1950.*



### ***Function of the Missionary***

When God is absent from a soul, hate and despair take over.

Hate is not inborn. It is not in children. It grows slowly—a product of disillusionment of this world's promise, of knowledge of this world's coldness.

So that the hard lines of hate will never crease a man's face, but that the knowledge of love will delight his heart, *a missionary gives his whole life to this one thing—to bring men to God and God to men.*—*From the MISSIONARY SERVANT. November, 1950.*

## Editorials

### **Behind the Communist Drive**

THE plain fact is that for most of mankind—and not all of them in Asia either—the human lot, in this age of scientific advance and progress, is shameful—hunger, when a man has a right to food; unnecessary sickness, when a man has a right to health; drudgery, when a man has a right to leisure; ignorance, when a man has a right to education. The spirit of rebellion, revolution, in the modern world is inevitable. And time and again—we are now seeing a climax, with Asia in turmoil—the Communists have gained control of that spirit, captured it and given it direction and focus.

The Communists have been ruthless, shrewd, double-dealing and double-talking, but, ironically enough, their greatest triumphs have been built on the failures of Christians. In a world where Christians have been numerous and well-organized, Communism, not Christianity, has voiced the indignation of millions. In a world full of inequalities and injustices, Communism, not Christianity, has been the revolutionary, radical thing. Neither the rich nor the powerful, the exploiters nor the

comfortably indifferent have feared Christianity. They have not seen it as a threat. Only the Communists, who understand what danger a dynamic Christianity could be to their own inhumanity, fear Christianity. The overfed can take it or leave it alone. In workaday life, they have found, Christianity can be ignored altogether; when it suits the purpose, the Sermon on the Mount can be reduced to a banquet-speech platitude.

The big danger is not that Christians will be persecuted—that is no more than they have been warned to expect. The big danger is that Christians will be persecuted for the wrong reasons—not because justice was loved but because injustice was condoned, not because of their sublime charity but because of their sublime indifference.

It is all right to answer with Chesterton that Christianity hasn't failed because it hasn't been tried. But then unless something is done about it, an argument may be won while a cause is lost.

Christians are better known as upholders of the status quo than as revolutionaries. For the majority of Catholics, the "social teachings of the Church" are heavy documents

written in cumbersome Latin-English that bear little relationship to the real world. The zeal, the energy, the social protest and genuine sacrifice of the Communist is a mystery, whereas a Christian above all others should be able to understand that kind of fire and dedication. But that is not the way it has been. Our Christianity has been a tame, lifeless thing that could arouse no one, not even ourselves.

It would be still another setback if what little Christian social dedication and action there are were to lag, now that Communists and fellow-travelers in this country are on the run. It would be tragic if Communism had become so identified with the spirit of social protest and Christianity so identified with the status quo, with all its evils, that Christians who carried on were suspect, considered discredited. Never has the time been riper for Christian social action. Never have the possibilities for genuine accomplishment been greater.

As for those who pioneered when the Communists were very much on the scene and close to winning the day completely, it must be admitted that they understood not only Communism and the climate that breeds Communists but Christianity itself better than most. You may not find them honored by the business schools or the Hearst papers as outstanding anti-Communists, but they were

there when there might have been only the servants of the Kremlin if they weren't.—THE COMMONWEAL, *New York, N. Y., Dec. 22, 1950.*

### U. S. Wealth

**W**HEN we try to point out that wealth in the United States is still badly distributed, we are promptly told that millions of Americans own stock in U.S. corporations. "How can wealth be concentrated in the hands of a few," we are asked, "when 10 million Americans own stock?"

Let's first take a look at these 10 million stockholders.

According to the Wall Street Journal, of 50 million families in the U.S., only 4 million hold any shares.

Of the 4 million families with stock, those with incomes over \$10,000 a year own over 60 per cent of all stock. (Only 5 per cent of the nation's people have incomes over \$10,000.)

Of the 4 million families, in only 2 million is the head of the family a stockholder in the company where he is employed.

The dividend story is pretty much the same. The 1 per cent at the top of the income pyramid received 65 per cent of all the dividends paid to persons. The next 4 per cent received 12 per cent. The other 95 per cent got the remainder: 23 per cent of the dividends. (This year

dividends are expected to be around \$7 billion.)

We hope that these figures will discourage those who try to prove that wealth and income are fairly distributed. But these figures should encourage the movement to make more workers owners of stock.

Ownership of a share will not solve the problem of control and responsibility. Just because men become stockholders, they don't automatically get control of a corporation. By various devices the biggest corporations in this country are owned by the many but controlled by the few. A.T.&T., for example, has almost a million stockholders, but the control of A.T.&T.'s wealth is held by a handful of shareholders.

There's a double job to be done: *let employes become owners* in the companies where they work; but also *make them responsible owners* with a voice in the corporation's affairs.—  
WORK, Chicago, Ill., December, 1950.

### Low-Rent Public Housing

LAST July the NCWC News Service carried a warning by Catholic housing authorities in various parts of the country that "powerful forces" were trying to block implementation on the local level of the U. S. Housing Act of 1949. This Act sets up a six-year program aimed at moving 810,000 families out of slums through low-cost public housing. The

Federal Government is empowered to finance up to 90 per cent of the projects through repayable loans.

The work of these "powerful forces" was evidenced in Roanoke when two housing projects were proposed for that city. The City Council at first was reported in favor of the plan, but by the time action was to be taken some of the members had changed their minds. Father Maurice McDonald, Redemptorist priest, led a courageous fight in an appearance before the Council in behalf of the projects.

As a result of an address Father McDonald gave before the Southwestern Deanery Council of Catholic Women, the group sent a resolution of congratulations to the Roanoke Housing Authority for its "charitable act" in approving the construction of 600 low-rent units.

The latest word is that Chairman John H. Windel has announced that prompt steps will be taken to purchase property for 300 units for white occupants and 300 units for Negro occupants.

A controversy has also been raging in California where Catholic officials, Catholic War Veterans and unions have joined forces to fight a move on a State-wide scale to strangle public housing proposals. Both candidates for governor opposed a proposed amendment sponsored by real estate interests. Governor Warren called it a "roadblock" to civilian defense and

a "departure from representative government." James Roosevelt said "it puts a strait-jacket on local elected officials and sets a dangerous precedent."

In Covington, Ky., the Campbell County Board of Realtors dropped its fight against a proposed 3-million-dollar low-rent project. The *Messenger*, diocesan weekly, in dubbing the campaign an effort "to persuade taxpayers into continuing to subsidize the slums," charged that cost of maintaining fire and police protection and other municipal services and of caring for victims in the slum areas have constituted a subsidy. "Tax revenue from run-down property has never paid the tax bill for the same area," an editorial pointed out. "As a result all other taxpayers and property holders have had to make up the difference." Owners of property in the slums never have objected to the "subsidy," the *Messenger* asserted, "but the very same realtors and home loan groups fighting the project as a step toward the Welfare State and Socialism gladly accept Federal

Housing Administration loan guarantees."

Americans in general should be on guard against government control which endangers private initiative, but it should be noted that low-rent housing projects are not in competition with landlords who have decent homes on the market. The law states that the highest level of income among those admitted or retained in a project must be 20 per cent below the lowest level of private enterprise rents currently being asked for apartments that are vacant and are sanitary.

Monsignor O'Grady, director of the National Conference of Catholic Charities, made it plain at the Conference's convention in Washington that the organization is solidly behind the move to eliminate appalling slums in favor of low-rent public housing. The Christian thinking behind the trend is to help provide the poor with an opportunity to live in decent surroundings. — CATHOLIC VIRGINIAN, Richmond, Va., Nov. 10, 1950.



### *The Christian Soldier*

It is never true to say "Blessed are they who suffer." It is true only when you add "and who know why." If you have faith you know why. If you have faith you know that the redemption of mankind was wrought by suffering. If you have faith you know that your soldier, sailor, flyer, marine came to his death with a meaning and a motive for his supreme sacrifice—a share in Christ's redemptive love, in the mystery of the Cross. —*Alfred J. Barrett, S.J.*

## Documentation

### Christmas Eve Address

HIS HOLINESS, POPE PIUS XII

*An address delivered over the Vatican Radio, December 23, 1950.*

A YEAR has already passed, Venerable Brethren and beloved children, since last Christmas Eve, that memorable day when, amid the intense expectation of the Catholic world, We promulgated and initiated the great Jubilee which has left such a profound mark on the life of the Church and surpassed the most sanguine hopes.

We still seem to hear, as if it happened yesterday, the blows of the hammer opening the sacred portal that has been the spiritual goal of all nations, and to listen to the jubilant applause of the faithful which greeted the announcement.

At that moment the Angel of the Lord, as it were, sped from that sacred threshold to the four corners of the earth to marshal and escort to the common fatherland of the faithful the countless throngs of pilgrims who, yearning to be purified by the life-giving waters of penance, eagerly sought to bring about the great return and to win the great pardon.

Today the same angel seems to say, as of old the Archangel said to Tobias: "It is time, therefore, that I return to Him that sent me: but bless ye God, and publish all His wonderful works" (Tobias, 12, 20).

The word "end," which the law of the present life imposes on all that is dearest and most sacred and on every event be it the most joyous and fruitful,

shall also be written on the Holy Doors of Jubilee, leaving in our hearts a sense at once of serene joy and of nostalgic regret, like to that which accompanied the three Apostles as they came down from Mount Tabor.

If it is right and fitting that we return thanks at all times and in all places to the Father, Giver of every good and perfect gift, how much more fervently tomorrow, when We have put the seal on the Holy Door, will there arise from our heart and from our lips the thanksgiving hymn which the voices of the Catholic world will chant in harmony, with a special note of exultation, in a thousand different accents, yet with one sole sentiment.

As We pause for the last time on the threshold trodden by the feet of so many pilgrims who came to seek there purification and pardon, there will be present to our mind, as in a single vision, all the wonderful events of this truly incomparable year; the grandeur and magnificence of the great liturgical functions, the invisible splendors, ever so much more beautiful, of souls renewed and sanctified in tears of repentance at the tribunal of penance and in tears of love at the foot of the altar.

We shall live again in thought the solemn canonization and beatification ceremonies, the living witness of the great achievements of human nature strengthened by divine grace and of the



numerous beneficent works to which the Church has given birth in every age.

We shall hear again the irrepressible shouts of jubilation, the devout prayers and hymns whose enthusiastic chorus was re-echoed from the vaults of the Vatican Basilica, which, being unable to hold the ever-growing multitudes, took on new dimensions, stretching forth the arms of its colonnades to receive them. We shall see again in spirit Easter Sunday and the Feast of Corpus Christi, the evening of the Canonization of Saint Maria Goretti, the morning lit with an unusual secret splendor when the Dogma of the Assumption of Mary was proclaimed. We shall see once more the great processions of penance and propitiation which honored through the streets of Christian Rome the venerable images of the Crucified and of the Virgin. There will crowd in upon our mind the memories of all the congresses which have met to study the sacred sciences and problems of the Apostolate; the echoes of our discourses addressed to such a great variety of persons, and especially the encyclical *Humani Generis* and our exhortation to the clergy, from which We expect the most fruitful results.

#### POPE RECALLS PILGRIMS

There will pass before our mind's eye with deep sense of loss the cherished memory of your countenances, the countenances of you, especially, Venerable Brethren in the Episcopacy, who flocked to us in such imposing numbers and listened to our words with such docility; and then your countenances also, beloved sons and daughters. We shall never be able to forget the expression of your eyes, even more than the motion of your lips, when you came to confide in us your sorrows and

your intimate hopes. Our heart was touched with unspeakable emotion every time We descended into the midst of our dear Christian people.

No anxiety, no weariness was ever able to prevent us from satisfying your earnest desire, or make us omit our meetings with you. To admit you into our presence, or rather to expect you and to long for you, was more a need of our heart than a duty of our pastoral office. Every time We delayed in saluting you, calling out your names by nations, by dioceses, by parishes and by groups, We wished, as it were, to gather all your words, all your prayers which you desired to have pass through our hands in order to present them to Jesus.

How We would have then wished to press all of you to our heart, to make known to all how We returned tenderness with tenderness, and instill a word of confidence and of hope into all of your hearts, into the hearts, especially beloved of Jesus and ourselves, of the poor and sick, who on some days formed the most beautiful adornment of the Vatican Basilica, and in whom We have always seen the richest and the most precious treasure of the Church.

If, however, during the Holy Year the Confession of Saint Peter in the Vatican has been the witness and center of such impressive manifestations of the unity of Catholics of the entire world in faith and in love, the glory of this sacred place has been increased also in another respect. The excavations beneath the same confession, at least inasmuch as they concern the tomb of the Apostle (explorations which have been the object of our thoughtful attention from the first months of our pontificate), and their scientific examination have been brought to a happy conclusion in the course of this Jubilee year. In a very short time a documented

work will be published which will bring to the knowledge of the public the results of these explorations, which have been carried out with the greatest care.

This work has had most fruitful and important results. But the essential question is this: Has the tomb of Saint Peter really been found? To that question the answer is beyond all doubt: Yes. The tomb of the Prince of the Apostles has been found. Such is the final conclusion after all the labor and study of these years.

A second question, subordinate to the first, refers to the relics of Saint Peter. Have they been found? At the side of the tomb remains of human bones have been found. However, it is impossible to prove with certainty that they belong to the body of the Apostle. This still leaves intact the historical reality of the tomb itself. The immense dome rises directly over the tomb of the first Bishop of Rome, the first Pope. The tomb originally was very modest, but the veneration of centuries has erected over it, in a remarkable sequence of architectural and artistic achievements, the greatest church in Christendom.

### CHALLENGE TO THE PILGRIMS

But the millions of people gathered here at the center of Catholicity from the four points of the compass to take part in this world event of the Holy Year, to gain the Jubilee indulgence, to strengthen themselves in the laver of purification and sanctification, to draw with joy, from as close to the source as possible, graces from the Saviour's fountains (Isaiah 12, 3)—shall they perhaps be satisfied merely to return to their native lands as privileged ones among the hundreds of millions who have not been able to enjoy such favor? Shall they merely relate to

their neighbors the wonderful things they have seen? Shall they merely seek refuge in these happy memories from the grim realities of life that were forgotten for a moment? No. Now they must be convinced of the mission which is theirs—an honor and at the same time a responsibility—to become among their fellow Christians heralds and propagators of the spirit with which their hearts overflow.

As a tree in the garden of the father of the family the Holy Year has flowered magnificently and if its flowers at the year's close drop their petals to the ground, it is only that the fruit may grow and mature. For it is necessary that this fruit should grow and mature. The world hungers and thirsts for it while its living conditions, with all the material and spiritual misery involved, are far indeed from giving men the legitimate satisfactions they seek. The needs and anxieties of each day completely absorb the energies of so many hearts which no longer find either time or leisure or inclination to devote to things of the spirit, even that minimum which is the essential duty of every Christian.

Even in those places where the secular and regular clergy, aided by the wholehearted collaboration of the laity, have quickened Christian life, even there the number of Christians who are spiritually undernourished, enervated and vacillating in their faith is such that the Church in her maternal solicitude cannot but be concerned.

To arouse these sons of the Church from their easy-going but dangerous lethargy is the urgent task which now confronts the Catholic Apostolate.

### OBSTACLES TO THE APOSTOLATE

Every attentive observer who knows how to consider and evaluate the pres-

ent situation in its concrete reality must be struck by the serious obstacles which oppose the apostolates of the Church. Like a mass of molten lava, which gradually flows down the side of a volcano, the destructive tide of the spirit of this world advances threateningly and spreads into every sphere of life and into every class of society. Its progress and its intensity as well as its effects vary from country to country, ranging from a more or less conscious disregard of the social influence of the Church to a systematic distrust which, under some types of government, takes the form of open hostility and downright persecution.

We have full confidence that our beloved sons and daughters will have the clarity of vision and the courage to face and to fulfill with resolution the responsibilities arising from such a situation. Without harshness, but also without weakness, they will endeavor to dissipate the prejudices and suspicions of not a few who have been deceived, but who are still open to a peaceful argument based on facts; they will convince them that, far from there being any conflict between loyalty to the Church and devotion to the interests and well-being of the people and the state, between these two kinds of duties, which a true Christian must ever keep in mind, there exists an intimate union and perfect harmony.

Here We deliberately pass over in silence some recent discord that has arisen between Catholics and those belonging to other religious groups and which has regrettably found an echo in political discussions. We should like to believe that beyond these no less unpleasant than harmful controversies there are to be found in all non-Catholic groups men and women of good will who, fully realizing the dangers

threatening the sacred heritage of the Christian faith, cherish in their hearts thoughts other than those of fraternal dissension and discord. If anyone should be tempted to lose sight of this need and duty, let him turn his gaze—as far as this is possible—toward what is happening in some countries that are encircled about, as it were, with a wall of iron, and see what state they are reduced to as regards their spiritual and religious life.

### PERSECUTION IS RECALLED

He would there see millions of his Catholic brethren, men and women, linked together by ancient and sacred traditions of fidelity to Christ and of filial union with this Apostolic See; he would see nations whose heroic actions in preserving and defending the faith are written indelibly in the annals of the Church's history; he would see them, We say, frequently deprived of civil rights and of their personal liberty and security, cut off from every vital, safe and sure means of communicating with the center of Christianity, even in the most intimate matters of conscience; and all the while there weighs on them the anxiety of feeling almost alone and at times of believing that they are abandoned.

Underneath Michelangelo's dome, where the voice of pilgrims from every free country resounded as they sang in most varied tongues the same expressions of faith and the same hymns of joy, their place was empty. What a void it was and what a sorrow for the heart of the Common Father and for the hearts of all the faithful united together in the very same belief and in one and the same love. But they, though absent, were in fact all the more present when in these countless throngs, conscious of their Catholic faith, there

seemed to be but one heart and one soul, thus forming a mysterious but very real unity.

To all these confessors of Christ, who are unjustly bound either by visible or invisible fetters, who are suffering contumely for the name of Jesus (Acts 5, 41), at the end of this Holy Year We gratefully send from our heart our paternal greeting. May it reach them notwithstanding the walls of their prisons, and the barbed wire of their concentration and forced labor camps, out there in those far-off regions which are shut off from the gaze of free men and over which a veil of silence is drawn, but which will not, however, escape the final judgment of God nor the impartial verdict of history.

#### EXHORTATION OF SUPPORT

In the sweet name of Jesus, We exhort them to support generously their sufferings and humiliations, with which they make a contribution of inestimable value to the great crusade of prayer and penance which will begin with the extension of the Holy Year to the whole Catholic world. With magnanimous outpouring of charity in keeping with the example of our Lord, the Apostles and the true followers of the Redeemer, may their prayers and ours include even those who are today amid the ranks of the persecutors.

Now, if We can look toward the future, the first urgent problem that presents itself is peace within each country. Unfortunately, the struggle for life, the concern to earn a living, divides into opposing groups even those who inhabit the same country and are sons of the same fatherland. Those on either side want, and rightly so, to be considered and treated in social life, not as mere chattels, but as persons with human dignity, especially in matters

regarding the state and the national economy. For this reason We have repeatedly, and with ever greater insistence, proclaimed the fight against unemployment and the striving after a sound social security as an indispensable condition if all members of a nation, both high and low, are to be united in a single corporate body.

But he who would selfishly see today in the groups that oppose his own personal interests, the source of every difficulty and an obstacle to recovery and progress, how could he dare to flatter himself that he is serving the cause of peace in his country? Certain organizations, in order to protect the interests of their own members, no longer appeal to the laws of justice and the common good, but depend on the organized numbers of their followers and the weakness of their opponents, who do not happen to be so well organized, or who always strive to subordinate the use of force to the laws of justice and the common good. How can such organizations dare to flatter themselves that they are promoting the cause of civil peace?

A nation cannot expect to enjoy peace within its own boundaries except on certain conditions. Governors and governed, leaders and followers, must not defend their own social interests and their particular opinions with obstinacy and short-sightedness, but should learn to take a more comprehensive view of things and make their aim the good of all. If it is regretted in some countries that there is a deplorable lack of participation in public life on the part of the younger generation, perhaps the reason is that the younger generation sees too little or too seldom the shining and attractive example of men such as We have described.

Beneath the surface, then, of unques-

tionable difficulties in the political and economic sphere, there is hidden a more serious evil of a spiritual and moral character. It is evidenced by the number of men with narrow minds and mean spirits, of egoists and "go-getters," of those who follow fortune's favorites, who let themselves be swayed from illusions or cowardice by the spectacle of huge mobs, the shouting of opinions, and the intoxication of excitement. Left to themselves, these would not take one step forward, would not, as is the duty of true Christians, advance unwaveringly toward the light of the eternal principles, under the guidance of the spirit of God and with unshakable faith in His Divine Providence. Herein is to be found the true and deepest source of human misery.

### EVIL GNAWS AT NATIONS

Like a termite in the woodwork of a house, this evil gnaws away at the heart of nations and before it makes its presence known exteriorly, it renders them unfit for their mission in life. Thus the foundations of the industrial and capitalistic systems have undergone essential changes that, after a long period of preparation, have been accelerated by the war. Peoples that have known subjection for centuries are winning their way to independence, others who till now have been in a privileged position strive by new means and old to maintain it. The thirst for social security, that is ever growing in intensity and extent, is but a symptom of the present state of society in the various countries, where many things that once seemed traditionally solid have become unreliable and uncertain.

Why, then, does not this common uncertainty and doubt, arising from present circumstances, create a certain solidarity among the peoples in different

countries? Is not the interest of the employer and the employed in this respect identical? Is it not true in every country that industrial and agricultural production are now more than ever linked together on account of the reciprocal influence they exert one upon the other? And you, you who remain insensible to the hardships suffered by the wandering and homeless refugees, should you not have a fellow-feeling for him whose unhappy lot today may well be yours tomorrow?

Why should not this solidarity among all those peoples who are restless and in danger become for all the secure way leading to safety? Why should not this spirit of solidarity be the basis of the natural social order in its three essentials—the family, property and the state—and make these elements collaborate in one organic whole that is adapted to present conditions? These present conditions are, after all, despite all their inherent difficulties, a gift of God; why should they not conduce to the strengthening of the Christian spirit?

The real danger to international, as well as national, peace is the presence of men who are bereft of this Christian sense. Some have been deceived in the past; others are fanatically bent on attaining some Utopia of the future; in every case, they are dissatisfied with the present. We do not wish to speak here of a foreign aggressor who is proud of his power and scorns every duty of justice and charity. He finds, however, in additional crises and in the lack of unity within nations as regards spiritual and moral matters a powerful weapon and, as it were, an auxiliary force inside the country itself. It is necessary, then, that nations should not be led by motives of prestige or antiquated ideas, and so create political

and economic difficulties against the strengthening of the national forces of other countries, while they ignore or take no thought for the common peril.

### **ALLIANCE IS ADVOCATED**

It is necessary that they should understand that their natural and most faithful allies are to be found among those countries where Christian thought, or at least faith in God, have an influence even in public life; they should not make their only consideration some supposed national or political interest that neglects or overlooks profound differences in fundamental concepts of the world and of life. The reasons why We utter these warnings is the ambiguous and irresolute attitude which We see adopted by some true lovers of peace in the face of such a grave peril. And, because We have at heart the good of all nations, We believe that the close union of all peoples who are masters of their own destiny, and who are united by sentiments of reciprocal trust and mutual assistance, is the sole means for the defense of peace and the best guarantee of its re-establishment. Unfortunately, in these past weeks the cleavage which in the external world divides the entire international community into opposite camps grows constantly deeper, placing in jeopardy the peace of the world.

Never has the history of mankind known a dissension of greater magnitude; it reaches to the very ends of the earth.

If a regrettable conflict should occur today, weapons would prove so destructive as to make the earth "void and empty," (Genesis 1, 2) a desolate chaos, like to a desert over which the sun is not rising, but setting. All nations would be convulsed, and among the citizens of the same country, the

conflict would have manifold repercussions; it would place in extreme peril all its civil institutions and spiritual values, seeing that the conflict now embraces all the most difficult problems which normally would be discussed separately.

The grim and threatening danger imperiously demands, by reason of its gravity, that we make the most of every opportune circumstance to bring about the triumph of wisdom and justice under the standard of concord and peace. Let it be used to revive sentiments of goodness and compassion towards all peoples whose one sincere aspiration is to live in peace and tranquillity. Let mutual trust, which presupposes sincere intentions and honest discussions, return to rule over international organizations.

Away with the barriers! Break down the barbed-wire fences! Let each people be free to know the life of other peoples; let that segregation of some countries from the rest of the civilized world, so dangerous to the cause of peace, be abolished. How earnestly the Church desires to smooth the way for these friendly relations among peoples. For her East and West do not represent opposite ideals but share a common heritage, to which both have generously contributed and to which both are called to contribute in the future also. By virtue of her divine mission she is a mother to all peoples, and a faithful ally and wise guide to all who seek peace.

Nevertheless, there are some, and they are well known, who accuse us quite unjustly of wanting war, and of collaborating to this end with "imperialist" powers, who, they say, place their hopes rather in the power of destructive weapons of war than in the practice of justice. What else can We

answer to this bitter calumny except: Sift the troubled twelve years of our Pontificate; weigh every word that our lips have uttered, every sentence our pen has written; you will find in them only appeals for peace. Recall especially the historic month of August, 1939. At a time when the prospect of a disastrous world war was growing ever more terrible, from the shore of Lake Albano (the Pope's summer residence) We raised our voice, entreating, in the name of God, governments and peoples to settle their disputes by mutual and sincere agreements. Nothing is lost by peace, We exclaimed, everything can be lost by war.

Try to consider all this with a calm and honest mind, and you must recognize that if in this world, torn by conflicting interests, there is still left any secure haven where the dove of peace can tranquilly come to rest, it is here in this place hallowed by the blood of the Apostles and of the martyrs, here again where the Vicar of Christ knows no duty more sacred, no mission more gratifying than that of being the unwearied advocate of peace. Thus We have acted in the past. Thus shall We act in the future, for as long as it shall please the divine Founder of the Church to leave on our frail shoulders

the dignity and the burden of supreme pastor.

The way leading to true peace is long and hard, and impeded by briars and thorns. However, the great majority of men are ready to make the sacrifice in order to be preserved from the catastrophe of a new war. Still, the undertaking is so great and merely human means so ineffective, that We turn our gaze to heaven and raise our hands in supplication to Him who from the glory of the Divinity came down to our level and became "one of us." The power of the Saviour, who moves the hearts of rulers wherever He will, like streams of water whose course He regulates (Proverbs 21, 1), can still the tempest that tosses the bark when not only the companions of Peter are alarmed, but the whole human race. It is the sacred duty of the Church's children to implore with their prayers and sacrifices to the Lord of the World, Jesus Christ, God blessed forever (Romans 9, 5) to command the winds and the sea, and grant to harassed humanity the great calm (Matthew 8, 26) of true peace.

With these sentiments We impart from our heart to you, beloved sons and daughters, and to all who listen to our voice throughout the world, the apostolic benediction.



## THE CATHOLIC MIND

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